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COMPILATION
OF THE
SOCIAL SECURITY LAWS

INCLUDING THE SOCIAL SECURITY ACT, AS AMENDED, AND RELATED ENACTMENTS
THROUGH JANUARY 1, 1991

VOLUME II

PRINTED FOR THE USE OF THE
COMMITTEE ON WAYS AND MEANS BY ITS STAFF

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PREFACE

The Social Security Act

The original Social Security Act is P.L. 74-271 (49 Stat. 620), approved August 14, 1935. The Social Security Act has been amended, in part, a number of times. A list of the laws amending the Social Security Act is in Appendix I, Volume II.

Administration of the Social Security Act

The Social Security Board was responsible for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of Title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of Title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now see Rehabilitation Act of 1973); and Title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946 [see Vol. II.] transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under Title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment compensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reorganization Plan No. 2 of 1949 [see Vol. II.].

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 [see Vol. II.] with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by P.L. 96-88, §509, approved October 17, 1979. That public law did not amend references to the Secretary in the Social Security Act. The Department of Health and Human Services redesignation was effective May 4, 1980 (45 Federal Register 29642; May 5, 1980). The Department of Education which was established by P.L. 96-88 was activated May 4, 1980 (Executive Order 12212 of May 2, 1980; 45 Federal Register 29557; May 5, 1980).

This Compilation of the Social Security Laws

This compilation is current through January 1, 1991. This compilation contains:

Volume I

(1) Table of Contents;
(2) The Social Security Act, as in effect January 1, 1991;
(3) Internal Revenue Code—Selected Provisions; and
(4) Index to the Social Security Act.

Volume II

(1) Table of Contents;
(2) Other provisions of the Internal Revenue Code, provisions of public laws and statutes which are cited in the Social Security Act, and provisions of public laws which affect administration of the Social Security Act but do not amend it; and
(3) Appendixes containing other helpful information.

Volume III

Provisions of the Social Security Act which have been superseded.

Effect of Compilation

This Compilation of the Social Security Laws is not prima facie evidence of the provisions of the Social Security Act or other laws or statutes which are included. This compilation has been prepared solely for convenient reference purposes.

Cautions

Although they are not a part of the text of the law, citations have been included which will enable the reader to locate the same material in the United States Code (U.S.C.). These matching citations to the United States Code are shown within brackets after the public law section, as, for example:

[Social Security Act]	Sec. 201. [42 U.S.C. 401]
[Public Law 99-509]	Sec. 9342. [42 U.S.C. 1395b-1 note].

Thus, both sections may be found in Title 42 of the United States Code, the first at section 401 and the second in the notes following section 1395b-1. "[None assigned]" means the provision is not in the United States Code, but can be found in the public law.

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Title 21

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§310.6 Applicability of "new drug" or safety or effectiveness findings in drug efficacy study implementation notices and notices of opportunity for hearing to identical, related, and similar drug products.

(a) The Food and Drug Administration's conclusions on the effectiveness of drugs are currently being published in the FEDERAL REGISTER as Drug Efficacy Study Implementation (DESI) Notices and as Notices of Opportunity for Hearing. The specific products listed in these notices include only those that were introduced into the market through the new drug procedures from 1938-62 and were submitted for review by the National Academy of Sciences-National Research Council (NAS-NRC), Drug Efficacy Study Group. Many products which are identical to, related to, or similar to the products listed in these notices have been marketed under different names or by different firms during this same period or since 1962 without going through the new drug procedures or the Academy review. Even though these products are not listed in the notices, they are covered by the new drug applications reviewed and thus are subject to these notices. All persons with an interest in a product that is identical, related, or similar to a drug listed in a drug efficacy notice or a notice of opportunity for a hearing will be given the same opportunity as the applicant to submit data and information, to request a hearing, and to participate in any hearing. It is not feasible for the Food and Drug Administration to list all products which are covered by an NDA and thus subject to each notice. However, it is essential that the findings and conclusions that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective be applied to all identical, related, and similar drug products to which they are reasonably applicable. Any product not in compliance with an applicable drug efficacy notice is in violation of section 505 (new drugs) and/or section 502 (misbranding) of the act.

(b)(1) An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties.

(2) Where experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs would conclude that the findings and conclusions, stated in a drug efficacy notice or notice of opportunity for hearing, that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective are applicable to an identical, related, or similar drug product, such product is affected by the notice. A combination drug product containing a drug that is identical, related, or similar to a drug named in a notice may also be subject to the findings and conclusions in a notice that a drug product is a "new drug" or that there is a lack of evidence to show that a drug product is safe or effective.

(3) Any person may request an opinion on the applicability of such a notice to a specific product by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(c) Manufacturers and distributors of drugs should review their products as drug efficacy notices are published and assure that identical, related, or similar products comply with all applicable provisions of the notices.

(d) The published notices and summary lists of the conclusions are of particular interest to drug purchasing agents. These agents should take particular care to assure that the same purchasing policy applies to drug products that are identical, related, or similar to those named in the drug efficacy notices. The Food and Drug Administration applies the same regulatory policy to all such products. In many instances a determination can readily be made as to the applicability of a drug efficacy notice by an individual who is knowledgeable about drugs and their indications for use. Where the relationships are more subtle and not readily recognized, the purchasing agent may request an opinion by writing to the Food and Drug Administration at the address shown in paragraph (e) of this section.

(e) Interested parties may submit to the Food and Drug Administration, Center for Drugs and Biologics, Office of Compliance, HFN-300, 5600 Fishers Lane, Rockville, MD 20857, the names of drug products, and of their manufacturers or distributors, that should be the subject of the same purchasing and regulatory policies as those reviewed by the Drug Efficacy Study Group. Appropriate action, including referral to purchasing officials of various government agencies, will be taken.

(f) This regulation does not apply to OTC drugs identical, similar, or related to a drug in the Drug Efficacy Study unless there has been or is notification in the FEDERAL REGISTER that a drug will not be subject to an OTC panel review pursuant to §§330.10, 330.11, and 330.5 of this chapter.

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[*Internal Reference.*—Social Security Act §§1861(t) and 1862(c) cite §310.6 of title 21 of the Code of Federal Regulations.]

Title 42

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§405.454 Payments to providers.[1]

* * * * * * *

(j) *Periodic interim payment method of reimbursement.*—

(1)(i) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(ii) *Covered services furnished on or after July 1, 1987.* Effective with covered services furnished to beneficiaries on or after July 1, 1987, the PIP method, in addition to the other methods of interim payment on individual provider billings for covered services, is available only for the following:

(A) Part A SNF services.

(B) Part A and Part B HHA services.

(C) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90-248 (42 U.S.C. 1395b-1) or section 222(a) of Pub. L. 92-603 (42 U.S.C. 1395b-1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.

(D) Part A services furnished in hospitals located in a rural area as defined in §412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns.

(2) Any participating provider furnishing the services described in paragraph (j)(1) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of an HHA, either its estimated—

(A) *Total Medicare reimbursement* for Part A and Part B services is at least $25,000 a year computed under the PIP formula; or

(B) Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable cost.

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the Medicare program).

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis.

(iv) The provider has repaid or agrees to repay any outstanding current financing payment in full, such payment to be made before the effective date of its requested conversion from a regular interim payment method to the PIP method.

(3) No conversion to the PIP method may be made with respect to any provider until after that provider has repaid in full its outstanding current financing payment.

(4) The intermediary's approval of a provider's request for reimbursement under the PIP method will be conditioned upon the intermediary's best judgment as to whether payment can be made to the provider under the PIP method without undue risk of its resulting in an overpayment because of greatly varying or substantially declining

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[1] As in effect October 1, 1986.

Medicare utilization, inadequate billing practices, or other circumstances. The intermediary may terminate PIP reimbursement to a provider at any time it determines that the provider no longer meets the qualifying requirements or that the provider's experience under the PIP method shows that proper payment cannot be made under this method.

(5) Payment will be made biweekly under the PIP method unless the provider requests a longer fixed interval (not to exceed 1 month) between payments. The payment amount will be computed by the intermediary to approximate, on the average, the cost of covered inpatient or home health services rendered by the provider during the period for which the payment is to be made, and each payment will be made 2 weeks after the end of such period of services. Upon request, the intermediary will, if feasible, compute the provider's payments to recognize significant seasonal variation in Medicare utilization of services on a quarterly basis starting with the beginning of the provider's reporting year.

(6) A provider's periodic interim payment amount may be appropriately adjusted at any time if the provider presents or the intermediary otherwise obtains evidence relating to the provider's costs or Medicare utilization that warrants such adjustment. In addition, the intermediary will recompute the payment immediately upon completion of the desk review of a provider's cost report and also at regular intervals not less often than quarterly. The intermediary may make a retroactive lump sum interim payment to a provider, based upon an increase in its periodic interim payment amount, in order to bring past interim payments for the provider's current cost reporting period into line with the adjusted payment amount. The objective of intermediary monitoring of provider costs and utilization is to assure payments approximating, as closely as possible, the reimbursement to be determined at settlement for the cost reporting period. A significant factor in evaluating the amount of the payment in terms of the realization of the projected Medicare utilization of services is the timely submittal to the intermediary of completed admission and billing forms. All providers must complete billings in detail under this method as under regular interim payment procedures.

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[*Internal Reference.*—Social Security Act §1815(e)(2) cites §405.454(j) of title 42, Code of Federal Regulations.]

Rules of Civil Procedure

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Rule 4. [28 U.S.C. Appendix] Process

(a) SUMMONS: ISSUANCE. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

(b) SAME: FORM. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. When, under Rule 4(e), service is made pursuant to a statute or rule of court of a state, the summons, or notice, or order in lieu of summons shall correspond as nearly as may be to that required by the statute or rule.

(c) SERVICE.

(1) Process, other than a subpoena or a summons and complaint, shall be served by a United States marshal or deputy United States marshal, or by a person specially appointed for that purpose.

(2)(A) A summons and complaint shall, except as provided in subparagraphs (B) and (C) of this paragraph, be served by any person who is not a party and is not less than 18 years of age.

(B) A summons and complaint shall, at the request of the party seeking service or such party's attorney, be served by a United States marshal or deputy United States marshal, or by a person specially appointed by the court for that purpose, only—

(i) on behalf of a party authorized to proceed in forma pauperis pursuant to Title 28, U.S.C. §1915, or of a seaman authorized to proceed under Title 28, U.S.C. §1916,

(ii) on behalf of the United States or an officer or agency of the United States, or

(iii) pursuant to an order issued by the court stating that a United States marshal or deputy United States marshal, or a person specially appointed for that purpose, is required to serve the summons and complaint in order that service be properly effected in that particular action.

(C) A summons and complaint may be served upon a defendant of any class referred to in paragraph (1) or (3) of subdivision (d) of this rule—

(i) pursuant to the law of the State in which the district court is held for the service of summons or other like process upon such defendant in an action brought in the courts of general jurisdiction of that State, or

(ii) by mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to form 18-A and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this subdivision of this rule is received by the sender within 20 days after the date of mailing, service of such summons and complaint shall be made under subparagraph (A) or (B) of this paragraph in the manner prescribed by subdivision (d)(1) or (d)(3).

(D) Unless good cause is shown for not doing so the court shall order the payment of the costs of personal service by the person served if such person does not complete and return within 20 days after mailing, the notice and acknowledgment of receipt of summons.

(E) The notice and acknowledgment of receipt of summons and complaint shall be executed under oath or affirmation.

(3) The court shall freely make special appointments to serve summonses and complaints under paragraph (2)(B) of this subdivision of this rule and all other process under paragraph (1) of this subdivision of this rule.

(d) SUMMONS AND COMPLAINT: PERSON TO BE SERVED. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person, by serving the summons and complaint in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency.

(5) Upon an officer or agency of the United States, by serving the United States and by sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by delivering a copy of the summons and of the complaint to the chief executive officer thereof or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(e) SUMMONS: SERVICE UPON PARTY NOT INHABITANT OF OR FOUND WITHIN STATE. Whenever a statute of the United States or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state in which the district court is held, service may be made under the circumstances and in the manner prescribed by the statute or order, or, if there is no provision therein prescribing the manner of service, in a manner stated in this rule. Whenever a statute or rule of court of the state in which the district court is held provides (1) for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or found within the state, or (2) for service upon or notice to him to appear and respond or defend in an action by reason of the attachment or garnishment or similar seizure of his property located within the state, service may in either case be made under the circumstances and in the manner prescribed in the statute or rule.

(f) TERRITORIAL LIMITS OF EFFECTIVE SERVICE. All process other than a subpoena may be served anywhere within the territorial limits of the state in which the district court is held, and, when authorized by a statute of the United States or by these rules, beyond the territorial limits of that state. In addition, persons who are brought in as parties pursuant to Rule 14, or as additional parties to a pending action or a counterclaim or cross-claim therein pursuant to Rule 19, may be served in the manner stated in paragraphs (1)-(6) of subdivision (d) of this rule at all places outside the state but within the United States that are not more than 100 miles from the place in which the action is commenced, or to which it is assigned or transferred for trial; and persons required to respond to an order of commitment for civil contempt may be served at the same places. A subpoena may be served within the territorial limits provided in Rule 45.

(g) RETURN. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to the process. If service is made by a person other than a United States marshal or deputy United States marshal, such person shall make affidavit thereof. If service is made under subdivision (c)(2)(C)(ii) of this rule, return shall be made by the sender's filing with the court the acknowledgment received pursuant to such subdivision. Failure to make proof of service does not affect the validity of the service.

(h) AMENDMENT. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) ALTERNATIVE PROVISIONS FOR SERVICE IN A FOREIGN COUNTRY.

(1) *Manner.* When the federal or state law referred to in subdivision (e) of this rule authorizes service upon a party not an inhabitant of or found within the state in which the district court is held, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made: (A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or (B) as directed by the foreign authority in response to a letter rogatory, when service in either case is reasonably calculated to give actual notice; or (C) upon an individual, by delivery to him personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or (D) by any form of mail, requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or (E) as directed by order of the court. Service under (C) or (E) above may be made by any person who is not a party and is not less than 18 years of age or who is designated by order of the district court or by the foreign court. On request, the clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign court or officer who will make the service.

(2) *Return.* Proof of service may be made as prescribed by subdivision (g) of this rule, or by the law of the foreign country, or by order of the court. When service is made pursuant to subparagraph (1)(D) of this subdivision, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) SUMMONS: TIME LIMIT FOR SERVICE. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion. This subdivision shall not apply to service in a foreign country pursuant to subdivision (i) of this rule.

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[*Internal Reference.*—Social Security Act § 1128A(c) cites Rule 4 of the Federal Rules of Civil Procedure.]

TITLE 3, UNITED STATES CODE

THE PRESIDENT

* * * * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

* * * * * * *

§105. Assistance and services for the President

(a)(1) Subject to the provisons[1] of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

* * * * * * *

§106. Assistance and services for the Vice President

(a) In order to enable the Vice President to provide assistance to the President in connection with the performance of functions specially assigned to the Vice President by the President in the discharge of executive duties and responsibilities, the Vice President is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 5 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and in addition

(B) 3 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(C) 3 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

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§107. Domestic Policy Staff and Office of Administration; personnel

(a) In order to enable the Domestic Policy Staff to perform its functions, the President (or his designee) is authorized—

(1) without regard to any other provision of law regulating the employment or compensation of persons in the Government service, to appoint and fix the pay of not more than—

(A) 6 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(B) 18 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(C) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5; and

* * * * * * *

(b)(1) In order to enable the Office of Administration to perform its functions, the President (or his designee) is authorized—

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[1] As in original. Probably should be "provisions".

(A) without regard to such other provisions of law as the President may specify which regulate the employment and compensation of persons in the Government service, to appoint and fix the pay of not more than—

(i) 5 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5; and in addition

(ii) 5 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and

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[*Internal Reference.*—S.S. Act §210(a) cites title 3, U.S. Code.]

TITLE 5, UNITED STATES CODE

GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * * * *

§552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed.[1]**]**

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[1] P.L. 98-620, §402(2); 98 Stat. 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B)

establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§552a. Records maintained on individuals

(a) Definitions.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program"—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request. the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) General Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) Archival Records.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) Government Contractors.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.[2]

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) Effect of Other Laws.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

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[2] P.L. 101-508, §7201(b)(1), amended subsection (p) in its entirety.

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

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§553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

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§603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small

entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

§604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a succinct statement of the need for, and the objectives of, the rule;

(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

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§706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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§3109. Employment of experts and consultants; temporary or intermittent

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(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

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§3343. Details; to international organizations

(a) For the purpose of this section—

(1) "agency", "employee", and "international organization" have the meanings given them by section 3581 of this title; and

(2) "detail" means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

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§3371. Definitions

For the purpose of this subchapter—

(1) "State" means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4[3] of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

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[3] P.L. 101-301, §2(c), struck out "(m)".

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials; or

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management.

§3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54 of this title, on the same basis as other Federal employees.

§3373. Assignment of employees to State and local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

§3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

§3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the

United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

§3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

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§3581. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department; and

(C) an employing authority in the legislative branch;

(2) "employee" means an employee in or under an agency;

(3) "international organization" means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) "transfer" means the change of position by an employee from an agency to an international organization; and

(5) "reemployment" means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

* * * * * * *

§5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Secretary of Health and Human Services.

* * * * * * *

§5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Deputy Secretary of Health and Human Services.[4]

* * * * * * *

§5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Assistant Secretaries of Health and Human Services (5).

* * * * * * *

General Counsel of the Department of Health and Human Services.

* * * * * * *

Commissioner of Social Security, Department of Health and Human Services.

* * * * * * *

Inspector General, Department of Health and Human Services.

* * * * * * *

Administrator of the Health Care Financing Administration.

* * * * * * *

Chief Financial Officer, Department of Health and Human Services.[5]

* * * * * * *

§5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Assistant Secretary of Health and Human Services for Administration.

* * * * * * *

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.
Commissioner of Welfare, Department of Health and Human Services.

* * * * * * *

Director, Indian Health Service, Department of Health and Human Services.

§5317. Presidential authority to place positions at levels IV and V

In addition to the positions listed in sections 5315 and 5316 of this title, the President, from time to time, may place in levels IV and V of the Executive Schedule positions held by not to exceed 34 individuals when he considers that action necessary to reflect changes in organization, management responsibilities, or workload in an Executive agency. Such an action with respect to a position to which appointment is made by the President by and with the advice and consent of the Senate is effective only at the time of a new appointment to the position. Notice of each action taken under this section shall be published in the Federal Register, except when the President determines that the publication would be contrary to the interest of national security. The President may not take action under this section with respect to a position the pay for which is fixed at a specific rate by this subchapter or by statute enacted after August 14, 1964.

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§5332. The General Schedule

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54 of this title, is entitled to basic pay in accordance with the General Schedule.[6]

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[4] P.L. 101-509, §112(b), added "Deputy Secretary of Health and Human Services.".

[5] P.L. 101-576, §207(c), added "Chief Financial Officer, Department of Health and Human Services.".

SCHEDULE 1
General Schedule

	1	2	3	4	5	6	7	8	9	10
GS-1	$11,015	$11,383	$11,749	$12,114	$12,482	$12,697	$13,058	$13,422	$13,439	$13,776
GS-2	12,385	12,679	13,090	13,439	13,590	13,990	14,390	14,790	15,190	15,590
GS-3	13,515	13,966	14,417	14,868	15,319	15,770	16,221	16,672	17,123	17,574
GS-4	15,171	15,677	16,183	16,689	17,195	17,701	18,207	18,713	19,219	19,725
GS-5	16,973	17,539	18,105	18,671	19,237	19,803	20,369	20,935	21,501	22,067
GS-6	18,919	19,550	20,181	20,812	21,443	22,074	22,705	23,336	23,967	24,598
GS-7	21,023	21,724	22,425	23,126	23,827	24,528	25,229	25,930	26,631	27,332
GS-8	23,284	24,060	24,836	25,612	26,388	27,164	27,940	28,716	29,492	30,268
GS-9	25,717	26,574	27,431	28,288	29,145	30,002	30,859	31,716	32,573	33,430
GS-10	28,322	29,266	30,210	31,154	32,098	33,042	33,986	34,930	35,874	36,818
GS-11	31,116	32,153	33,190	34,227	35,264	36,301	37,338	38,375	39,412	40,449
GS-12	37,294	38,537	39,780	41,023	42,266	43,509	44,752	45,995	47,238	48,481
GS-13	44,348	45,826	47,304	48,782	50,260	51,738	53,216	54,694	56,172	57,650
GS-14	52,406	54,153	55,900	57,647	59,394	61,141	62,888	64,635	66,382	68,129
GS-15	61,643	63,698	65,753	67,808	69,863	71,918	73,973	76,028	78,083	80,138
GS-16	72,298	74,708	77,118	79,528	81,396	82,697	85,060	87,424	89,787	
GS-17	83,032	85,800	88,568	91,336	94,104					
GS-18	97,317									

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title.

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§5351. Definitions

For the purpose of this subchapter—

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(2) "student-employee" means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

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§5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

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§5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $14,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $20,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

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[6] The General Schedule rates are printed annually in the Federal Register. The rates effective on the first day of the first applicable pay period beginning on or after January 1, 1991, may be found in the Federal Register dated December 14, 1990, at 55 FR 51387.

For the purpose of determining length of service as a Government physician, service as a physician under section 4104 or 4114 of title 38 or active service as a medical officer in the commissioned corps of the Public Health Service under Title II of the Public Health Service Act (42 U.S.C. ch. 6A) shall be deemed service as a Government physician.

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service. No agreement shall be entered into under this section later than September 30, 1993, nor shall any agreement cover a period of service extending beyond September 30, 1995.[7]

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) chapter 54 of this title, relating to the performance management and recognition system;

(D) section 5371 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;

(E) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(F) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;

(G) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(H) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or

(I) section 2 of the Act of May 29, 1959 (Public Law 86-36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency; and

(2) "agency" means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley

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[7] P.L. 101-420, 104 Stat. 908, amended this sentence in its entirety.

Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

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§6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.
Birthday of Martin Luther King, Jr., the third Monday in January.
Washington's Birthday, the third Monday in February.
Memorial Day, the last Monday in May.
Independence Day, July 4.
Labor Day, the first Monday in September.
Columbus Day, the second Monday in October.
Veterans Day, November 11.
Thanksgiving Day, the fourth Thursday in November.
Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309 of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-workday is a legal public holiday for the employee.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

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§8332. Creditable service

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(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third sentence of subsection (f) of this section. For the purpose of the preceding sentence, "employee" includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

* * * * * * *

§8334. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7 1/2 percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member, a United States magistrate, a judge of the United States Court of Military Appeals, and a bankruptcy judge. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

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§8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2)[8] of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

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§8347. Administration; regulations

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(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

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(3) the Secretary of Health and Human Services or the Secretary's designee shall provide information contained in the records of the Social Security Administration; and

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter I—General Provisions

§8401. Definitions

For the purpose of this chapter—

(1) the term "account" means an account established and maintained under section 8439(a) of this title;

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[8] P.L. 101-508, §7001(b)(2)(D), inserted "or 8334(d)(2)".

(2) the term "annuitant" means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term "average pay" means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less that 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) except as provided in subchapter III of this chapter, the term "basic pay" has the meaning given such term by section 8331(3);

(5) the term "Board" means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term "Civil Service Retirement and Disability Fund" or "Fund" means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term "court" means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term "Director" means the Director of the Office of Personnel Management;

(9) the term "dynamic assumptions" means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(10) the term "earnings", when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term "employee" means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), (J), or (K) of section 8331(1) of this title;[9]

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office; and[10]

(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;[11]

whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, except that such term does not include—

(i) any individual referred to in—

(I) clause (i),[12] (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph; or

(III) the undesignated material after the last clause of such paragraph;

(ii) any individual excluded under section 8402(c) of this title;[13]

(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980; or[14]

(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);[15]

(12) the term "former spouse" means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

(B) if the former spouse was married to such individual for at least 9 months;

(13) the term "Executive Director" means the Executive Director appointed under section 8474(a);

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(18) the term "loss", as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.[16]

(19) the term "lump-sum credit" means the unrefunded amount consisting of—

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[9] P.L. 101-508, §7202(k)(1)(A)(i), struck out "and".
[10] P.L. 101-508, §7202(k)(1)(A)(ii), inserted "and".
[11] P.L. 101-508, §7202(k)(1)(A)(iii), added subparagraph (C).
[12] P.L. 101-474, §5(o), struck out "(v),".
[13] P.L. 101-508, §7202(k)(1)(A)(iv), struck out "or".
[14] P.L. 101-508, §7202(k)(1)(A)(v), inserted "or".
[15] P.L. 101-508, §7202(k)(1)(A)(vi), added clause (iv).
[16] As in original, possibly should be a semicolon.

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);

(C) amounts deposited by an employee, Member, or survivor under section 8411(f); and

(D) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(20) the term "Member" has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System;

(21) the term "net earnings" means the excess of earnings over losses;

(22) the term "net losses" means the excess of losses over earnings;

(23) the term "normal-cost percentage" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(24) the term "Office" means the Office of Personnel Management;

(25) the term "price index" has the same meaning as provided in section 8331(15);

(26) the term "service" means service which is creditable under section 8411;

(27) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and

(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term "survivor" means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term "System" means the Federal Employees' Retirement System described in section 8402(a);

* * * * * * *

(31) the term "military service" means honorable active service—

(A) in the armed forces;

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States; and[17]

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§8402. Federal Employees' Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

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[17] P.L. 101-335, §6(a)(1)(B), struck out a period and substituted "; and".

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8 of the Foreign Service Act of 1980; and

(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);

except to the extent provided for under subsection (d) of this section or title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

* * * * * * *

(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.

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§8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

SUBCHAPTER II—BASIC ANNUITY

§8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

§8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any

requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); and

(4) a period of service (other than any service under any of the preceding provisions of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8 of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

(c)(1) Except as provided in paragraph (2) or (3), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 301 of title 38; or

(B) under chapter 67 of title 10.

(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under section 8422(e)(5) shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest. A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.

(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

§8412. Immediate retirement

(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement officer, member of the Capitol Police,[18] or firefighter, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer, member of the Capitol Police,[19] or firefighter, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as an air traffic controller, or

(2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

(f) A Member who is separated from the service, except by resignation or expulsion—

(1) after completing 25 years of service, or

(2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

(g)(1) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.

(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.

(h)(1) The applicable minimum retirement age under this subsection is—

(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

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[18] P.L. 101-428, §3(a), inserted ", member of the Capitol Police,".
[19] P.L. 101-428, §3(a), inserted ", member of the Capitol Police,".

(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

§8413. Deferred retirement

(a) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 5 years of service is entitled to an annuity beginning at the age of 62 years.

(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service but before attaining the applicable minimum retirement age under section 8412(h) is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains such minimum retirement age and must precede the date on which the employee or Member becomes 62 years of age.

(2) The election of an annuity under this subsection shall not be effective unless—

(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

§8414. Early retirement

(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

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§8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

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(f)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(g)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

§8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9 months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

§8417. Survivor reduction for a former spouse

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

§8418. Survivor elections; deposit; offsets

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund, before the expiration of the 2-year period involved, an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

§8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by an appropriate percentage determined under subparagraph (B).

(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse; or

(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

(A) another former spouse who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

§8420. Insurable interest reductions

(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Member. Such individual shall be designated by the employee or Member in writing.

(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member, except that the total reduction may not exceed 40 percent.

(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

§8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which an employee or Member may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

(f)(1) Notwithstanding any other provision of this section, and except as provided in paragraph (2), an alternative form of annuity under this section may not be elected if the commencement date of the annuity would be later than December 1, 1990.

(2) Nothing in this subsection shall prevent an election from being made by any individual—

(A) who is separated from Government service involuntarily (other than for cause on charges of misconduct or delinquency), excluding—

(i) any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(ii) the Vice President;

(iii) any individual holding a position placed in the Executive Schedule under sections 5312 through 5317;

(iv) any individual appointed to a position by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule;

(v) any noncareer appointee in the Senior Executive Service or noncareer member of the Senior Foreign Service; and

(vi) any individual holding a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(B) as to whom the application of paragraph (1) would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

(3) This subsection shall cease to be effective as of October 1, 1995.[20]

§8421. Annuity supplement

(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h).

(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

(A) an amount determined under paragraph (2), multiplied by

(B) a fraction, as described in paragraph (3).

(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

(i) the average total wages of all workers for that year, multiplied by

(ii) a fraction—

(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

(3) The fraction under this paragraph for any annuitant is a fraction—

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[20] P.L. 101-508, §7001(a)(1), added subsection (f).

(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with 1/2 being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term "benefit computation year" has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term "average total wages of all workers", for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term "service" does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

§8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual's excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the "earnings" and the "applicable exempt amount" of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(c) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

§8422. Deductions from pay; contributions for military service

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The applicable percentage under this subsection for any pay period shall be—

(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

(i) 7 percent, minus

(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to rate of tax for old-age, survivors, and disability insurance); and

(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

(i) 7 1/2 percent, minus

(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(e)(1) Each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) January 1, 1987; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

§8423. Government contributions

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

(A) the product of—

(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

(B) the product of—

(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, multipled by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

(2) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, firefighters, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Clerk of the House of Representatives, from the contingent fund of the House.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

§8424. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (b), an employee or Member who—

(1)(A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

(b)(1) Payment of the lump-sum credit under subsection (a)—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

(i) the decree expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, "child" includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies—

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

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§8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the "Account") in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after December 31, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1981) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in paragraph (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

(h) For purposes of this section, the term "Federal service" includes Federal service as defined in section 8521(a).

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§8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) Service Benefit Plan.—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

(2) Indemnity Benefit Plan.—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) Employee Organization Plans.—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are

available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) Comprehensive Medical Plans.—

(A) Group-Practice Prepayment Plans.—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) Individual-Practice Prepayment Plans.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) Mixed Model Prepayment Plans.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

§8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

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§8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

(1) the service benefit plan;

(2) the indemnity benefit plan;

(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and

(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office)[21]

(c) There shall be withheld from the pay of each enrolled employee and [22] except as provided in subsection (i) of this section)[23] the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section)[24] from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(f) The Government contributions for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Clerk of the House of Representatives, from the contingent fund of the House; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraph (2), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A)[25] The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971,[26] or for a survivor of such an individual or of an individual who died on or after July 1, 1971,[27] while employed by the United States Postal Service,[28] shall be paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.[29]

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[21] As in original. Should have a period.

[22] As in original. Should have a beginning parenthesis before "except".

[23] P.L. 101-303, §1(b)(1), inserted "except as provided in subsection (i) of this section)". As in original. Should have a beginning parenthesis before "except".

[24] P.L. 101-303, §1(b)(2), inserted "(except as provided in subsection (i) of this section)".

[25] P.L. 101-508, §7102(b)(1), struck out "(2)" and substituted "(2)(A)".

[26] P.L. 101-508, §7102(a), struck out "October 1, 1986," and substituted "July 1, 1971,".

[27] P.L. 101-508, §7102(a), struck out "October 1, 1986," and substituted "July 1, 1971,".

[28] P.L. 101-239, §4003(a), inserted "or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service,".

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.[30]

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[*Internal References.*—S.S. Act §§202(b), (c), (e), (f), (g), and (x); 205(r); 210(a) and (p); 215(h); 217(f); 221(j) and (k); 226(g); 408(k); 706(b) and (c); 708(a); 908(d); 909; 1102(b); 1106(c); 1114(b), (f), and (g); 1122(i); 1125(b); 1139(f); 1153(d); 1160(a); 1816(e); 1840(d); 1845(a); 1869(b); 1871(b); 1878(f) and (h); and 1886(d) and (e) cite title 5, U.S. Code and S.S. Act §§907(c) and 1106 catchline have footnotes referring to title 5, U.S. Code.]

TITLE 10, UNITED STATES CODE
Armed Forces

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§801. Article 1. Definitions

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(11) The term "law specialist" means a commissioned officer of the Coast Guard designated for special duty (law).

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(13) The term "judge advocate" means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

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§1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except that—

(1) with respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided;

(2) routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service, except that pap smears and mammograms may be provided on a diagnostic or preventive basis[1];

(3) not more than one eye examination may be provided to a patient in any calendar year;

(4) under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided;

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[29] P.L. 101-508, §7102(b)(2), added subparagraph (B).

[30] P.L. 101-303, §1(a), added subsection (i).

[1] P.L. 101-510, §701(a), added ", except that pap smears and mammograms may be provided on a diagnostic or preventive basis".

(5) durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis;

(6) inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care;[2]

(7) services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;

(8) services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists)[3] may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided[4];

(9) special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis;

(10) therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided;

(11) treatment of obesity may not be provided if obesity is the sole or major condition treated;

(12) surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided;

(13) any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist,[5] optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in clause (4);

(14) the prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services; and

(15) electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater.

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[2] P.L. 101-510, §703(a), struck out "in excess of 60 days in any year;" and substituted "in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential trea[illegible]nt care;".

[3] P.L. 101-510, §702(a[illegible]A), inserted "(other than certified marriage and family therapists)".

[4] P.L. 101-510, §702(a[illegible])(B), added "and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided".

[5] P.L. 101-510, §702(a)(2), inserted "certified marriage and family therapist,".

The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150[6] each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E-5, the initial deductible each fiscal year under this paragraph shall be limited to $50.[7]

(3) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E-5, the first $100)[8] each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d) Under joint regulations to be prescribed by the administering Secretaries, in the case of a dependent, as defined in section 1072(2)(A) or (D) of this title, of a member of the uniformed services on active duty for a period of more than 30 days, who is moderately or severely mentally retarded or who has a serious physical handicap, the plans covered by subsection (a) shall, with respect to the retardation or handicap of such dependent, include the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and home treatment.

(3) Training, rehabilitation, and special education.

(4) Institutional care in private nonprofit, public and State institutions and facilities and, when appropriate, transportation to and from such institutions and facilities.

(e) Members shall be required to share in the cost of any benefits provided their dependents under subsection (d) as follows:

(1) Except as provided in clause (3), members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month and members in the highest commissioned pay grade shall similarly be required to pay $250 per month. The amounts to be similarly paid by members in all other pay grades shall be determined under joint regulations to be prescribed by the administering Secretaries.

(2) Except as provided in clause (4), the Government's share of the cost of any benefits provided in a particular case under subsection (d) shall not exceed $1,000 per month.

(3) Members shall also be required to pay each month that amount, if any, remaining after the Government's maximum share has been reached.

(4) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than he would be required to pay if he had but one such dependent.

(f) To qualify for the benefits provided by subsection (d), members shall be required to use public facilities to the extent they are available and adequate as determined under joint regulations of the administering Secretaries.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday.

(h)(1) Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 80th[9] percentile of billed charges made for similar services in the same locality during the base period.

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[6] P.L. 101-510, §712(a)(1)(A), struck out "$50" and substituted "$150".

[7] P.L. 101-510, §712(a)(1)(B), added this sentence.

[8] P.L. 101-510, §712(a)(2), struck out "$100" and substituted "$300 (or in the case of the family group of an enlisted member in a pay grade below E-5, the first $100)".

(2) For the purposes of paragraph (1), the 80th[10] percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.

(i)(1) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(A) provided under the program for the handicapped under subsection (d);

(B) provided as partial hospital care; or

(C) provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(2) Notwithstanding subsection (b) or section 1086(b) of this title, the Secretary of Defense (after consulting with the other administering Secretaries) may prescribe separate payment requirements (including deductibles, copayments, and catastrophic limits) for the provision of mental health services to persons covered by this section or section 1086 of this title. The payment requirements may vary for different categories of covered beneficiaries, by type of mental health service provided, and based on the location of the covered beneficiaries.

(3) Except in the case of an emergency, the Secretary of Defense shall require preadmission authorization before inpatient mental health services may be provided to persons covered by this section or section 1086 of this title. In the case of the provision of emergency inpatient mental health services, approval for the continuation of such services shall be required within 72 hours after admission.[11]

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2)(A) The amount to be paid to a provider of services for services provided under a plan covered by this section may be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(B) In subparagraph (A), the term[12] "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(l)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

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[9] P.L. 101-189, §730(a), struck out "90th" and substituted "80th".

[10] P.L. 101-189, §730(a), struck out "90th" and substituted "80th".

[11] P.L. 101-510, §703(b), amended subsection (i) in its entirety.

[12] P.L. 101-510, §1484(g)(1), inserted "the term".

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

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§1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $150[13] each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300[14] each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $10,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) The following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).[15]

However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(d) The provisions of section 1079(j) of this title shall apply to a plan covered by this section.

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[13] P.L. 101-510, §712(b)(1), struck out "$50" and substituted "$150".

[14] P.L. 101-510, §712(b)(2), struck out "$100" and substituted "$300".

[15] P.L. 101-189, §731(c)(2), amended paragraph (3) in its entirety.

(e) A person covered by this section may elect to receive benefits either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076-1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Notwithstanding subsection (d) or any other provision of this chapter, no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs[16].

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

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§2546. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.
(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

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[16] P.L. 101-189, §1621(a)(3), struck out "Veterans' Administration facilities" and substituted "facilities of the Department of Veterans Affairs".

[*Internal References.*—S.S. Act §§465(a) and 1866(a) cite title 10, U.S. Code, and S.S. Act §§2(a), 402(a), 1002(a), 1402(a), 1602(a) [State], and §1612(a) have footnotes to title 10, U.S. Code.]

TITLE 11, UNITED STATES CODE

BANKRUPTCY

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§523. Exceptions to discharge

(a) A discharge under section 727, 1141,,[1] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

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(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 402(a)(26) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;

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[*Internal Reference.*—S.S. Act §456(b) cites title 11, U.S. Code.]

TITLE 14—UNITED STATES CODE

COAST GUARD

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§707. Temporary members of the Reserve; disability or death benefits

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(e) In administering section 8133 of title 5, for a person covered by this section—

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(3) the Secretary of Labor shall inform the Secretary of Health and Human Services whenever a claim is filed and eligibility for compensation is established under subsection (a)(2) or (a)(3) of section 8133 of title 5. The Secretary of Health and Human Services shall then certify to the Secretary of Labor whether or not the member concerned was fully or currently insured under title II of the Social Security Act at the time of the member's death.

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[*Internal Reference.*—The catchline for S.S. Act §201 has a footnote referring to title 14, U.S. Code.]

TITLE 18, UNITED STATES CODE

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[1] As in original. One comma should be stricken.

Title 18

CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

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§203. Compensation to Members of Congress, officers, and others in matters affecting the Government

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise,[1] rendered or to be rendered either personally or by another—

(A) at a time when such person is a Member of Congress, Member of Congress Elect, Delegate, Delegate Elect, Resident Commissioner, or Resident Commissioner Elect; or

(B) at a time when such person is an officer or employee or Federal judge[2] of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States,[3]

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court,[4] court-martial, officer, or any civil, military, or naval commission; or

(2) knowingly gives, promises, or offers any compensation for any such representational[5] services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Member Elect,[6] Delegate, Delegate Elect,[7] Commissioner, Commissioner Elect, Federal judge,[8] officer, or employee;

shall be subject to the penalties set forth in section 216 of this title[9].

(b) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly—

(1) demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another, at a time when such person is an officer or employee of the District of Columbia, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the District of Columbia is a party or has a direct and substantial interest, before any department, agency, court, officer, or commission; or

(2) knowingly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was an officer or employee of the District of Columbia;

shall be subject to the penalties set forth in section 216 of this title.[10]

(c)[11] A special Government employee shall be subject to subsections (a) and (d)[12] only in relation to a particular matter involving a specific party or parties—

(1) in which such employee has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise; or

(2) which is pending in the department or agency of the Government in which such employee is serving except that paragraph (2) of this subsection shall not

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[1] P.L. 101-194, §402(1), struck out "services" and substituted "representational services, as agent or attorney or otherwise,".

[2] P.L. 101-280, §5(b)(1), inserted "or Federal judge".

[3] P.L. 101-194, §402(7), struck out "including the District of Columbia,".

[4] P.L. 101-194, §402(2), inserted "court,".

[5] P.L. 101-194, §402(4), inserted "representational".
P.L. 101-280, §5(b)(3), made the same amendment.

[6] P.L. 101-194, §402(5), inserted "Member Elect,".

[7] P.L. 101-194, §402(6), inserted "Delegate Elect,".

[8] P.L. 101-280, §5(b)(2), inserted "Commissioner Elect, Federal judge,".

[9] P.L. 101-194, §402(3), struck out "fined under this title or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States" and substituted "subject to the penalties set forth in section 216 of this title".

[10] P.L. 101-194, §402(9), added this subsection (b).

[11] P.L. 101-194, §402(8)(A), redesignated subsection (b) as subsection (c).

[12] P.L. 101-194, §402(8)(B), struck out "subsection (a)" and substituted "subsections (a) and (d)".

apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in this section prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for or otherwise representing his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or as a special Government employee[13] through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) in those matters that are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.[14]

(e) Nothing in this section prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.[15]

(f) Nothing in this section prevents an individual from giving testimony under oath or from making statements required to be made under penalty of perjury.[16]

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§205. Activities of officers and employees in claims against and other matters affecting the Government[17]

(a) Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, other than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or [18] civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(b) Whoever, being an officer or employee of the District of Columbia or an officer or employee of the Office of the United States Attorney for the District of Columbia, otherwise than in the proper discharge of official duties—

(1) acts as agent or attorney for prosecuting any claim against the District of Columbia, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim; or

(2) acts as agent or attorney for anyone before any department, agency, court, officer, or [19] commission in connection with any covered matter in which the District of Columbia is a party or has a direct and substantial interest;

shall be subject to the penalties set forth in section 216 of this title.

(c) A special Government employee shall be subject to subsections (a) and (b) only in relation to a covered matter involving a specific party or parties—

(1) in which he has at any time participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(2) which is pending in the department or agency of the Government in which he is serving.

Paragraph (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

(d) Nothing in subsection (a) or (b) prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

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[13] P.L. 101-280, §5(b)(4), struck out a comma and inserted "or as a special Government employee".
[14] P.L. 101-194, §402(10), added subsection (d).
[15] P.L. 101-194, §402(10), added subsection (e).
[16] P.L. 101-280, §5(b)(5), added subsection (f).
[17] P.L. 101-194, §404, amended §205 in its entirety.
[18] P.L. 101-280, §5(c)(1), struck out "any".
[19] P.L. 101-280, §5(c)(2), struck out "any".

(e) Nothing in subsection (a) or (b) prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for, or otherwise representing, his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except—

(1) in those matters in which he has participated personally and substantially as a Government employee or special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or

(2) in those matters which are the subject of his official responsibility,

subject to approval by the Government official responsible for appointment to his position.

(f) Nothing in subsection (a) or (b) prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the head of the department or agency concerned with the grant or contract certifies in writing that the national interest so requires and publishes such certification in the Federal Register.

(g) Nothing in this section prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(h) For the purpose of this section, the term "covered matter" means any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

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§207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches[20]

(a) Restrictions on All Officers and Employees of the Executive Branch and Certain Other Agencies.—

(1) Permanent restrictions on representation on particular matters.—Any person who is an officer or employee (including any special Government employee)[21] of the executive branch of the United States[22] (including any independent agency of the United States[23]), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States[24] or the District of Columbia,[25] knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia,[26] on behalf of any other person (except the United States or the District of Columbia[27]) in connection with a particular matter—

(A) in which the United States or the District of Columbia[28] is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially as such officer or employee, and

(C) which involved a specific party or specific parties at the time of such participation,

shall be punished as provided in section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility.—Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia[29], knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia[30]), in connection with a particular matter—

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[20] P.L. 101-194, §101(a), amended §207 in its entirety.
[21] P.L. 101-280, §2(a)(1)(A), inserted "(including any special Government employee)".
[22] P.L. 101-280, §2(a)(1)(B), struck out "Government".
[23] P.L. 101-280, §2(a)(1)(C), struck out "and any special Government employee".
[24] P.L. 101-280, §2(a)(1)(B), struck out "Government".
[25] P.L. 101-280, §2(a)(1)(D), struck out "as the case may be,".
[26] P.L. 101-280, §2(a)(1)(D), struck out "as the case may be,".
[27] P.L. 101-280, §2(a)(1)(E), inserted "or the District of Columbia".
[28] P.L. 101-280, §2(a)(1)(F), inserted "or the District of Columbia".
[29] P.L. 101-280, §2(a)(2)(A), struck out "Government" and substituted "or the District of Columbia".
[30] P.L. 101-280, §2(a)(2)(B), inserted "or the District of Columbia".

(A) in which the United States or the District of Columbia[31] is a party or has a direct and substantial interest,

(B) which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States[32] or the District of Columbia, and

(C) which involved a specific party or specific parties at the time it was so pending,

shall be punished as provided in section 216 of this title.

(3) CLARIFICATION OF RESTRICTIONS.—The restrictions contained in paragraphs (1) and (2) shall apply—

(A) in the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) in the case of an officer or employee of the District of or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.[33]

(b) ONE-YEAR RESTRICTIONS ON AIDING OR ADVISING.—

(1) IN GENERAL.—Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is[34] subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress[35], who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information,[36] knowingly represent, aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiation for a period of[37] 1 year after his or her service or employment with the United States[38] terminates. Any person who violates this subsection shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this paragraph—

(A) the term "trade negotiation" means negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) the term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) RESTRICTIONS.—In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special Government employee) of the executive branch of the United States[39] (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other

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[31] P.L. 101-280, §2(a)(2)(C), inserted "or the District of Columbia".

[32] P.L. 101-280, §2(a)(2)(D), struck out "Government".

[33] P.L. 101-280, §2(a)(3), added paragraph (3).
Alignment as in original.

[34] P.L. 101-280, §2(a)(4)(A), inserted "of the executive branch of the United States (including any independent agency) and is".

[35] P.L. 101-280, §2(a)(4)(B), struck out "and any person described in subsection (e)(7)" and substituted "or any person who is a former officer or employee of the legislative branch or a former Member of Congress".

[36] P.L. 101-280, §2(a)(4)(C), struck out "and which is so designated by the appropriate department or agency, shall not, on the basis of that information, which the person knew or should have known was so designated," and substituted "which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information,".

[37] P.L. 101-280, §2(a)(4)(D), inserted "a period of".

[38] P.L. 101-280, §2(a)(4)(E), struck out "Government".

[39] P.L. 101-280, §2(a)(5)(A), struck out "of the executive branch" and substituted "(including any special Government employee) of the executive branch of the United States".

person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in section 216 of this title.

(2) Persons to whom restrictions apply.—(A) Paragraph (1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) employed at a rate of pay specified in or[40] fixed according to subchapter II of chapter 53 of title 5,[41]

(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level V of the Executive Schedule;[42]

(iii) appointed by the President to a position under section 105(a)(2)(B) of title 3 or by the Vice President to a position under section 106(a)(1)(B) of title 3, or

(iv) employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in section 201 of title 37) is pay grade 0-7 or above.

(B) Paragraph (1) shall not apply to a special Government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C)[43] At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that—

(i) the imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) granting the waiver would not create the potential for use of undue influence or unfair advantage.

(d) Restrictions on Very Senior Personnel of the Executive Branch and Independent Agencies.—

(1) Restrictions.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

(A) serves in the position of Vice President of the United States,

(B) is employed in a position in the executive branch of the United States (including any independent agency)[44] at a rate of pay payable for level I of the Executive Schedule or employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule, or

(C) is appointed by the President to a position under section 105(a)(2)(A) of title 3 or by the Vice President to a position under section 106(a)(1)(A) of title 3,

and who, within 1 year after the termination of that person's service in that position, knowingly makes, with the intent to influence, any communication to or appearance before any person described in paragraph (2), on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States, shall be punished as provided in section 216 of this title.

(2) Persons who may not be contacted[45].—The persons referred to in paragraph (1) with respect to appearances or communications by a person in a position described in subparagraph (A), (B), or (C) of paragraph (1) are—

(A) any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person's service or employment with the United States Government terminated, and

(B) any [46] person appointed to a position in the executive branch which is listed in section 5312, 5313, 5314, 5315, or 5316 of title 5.

(e) Restrictions on Members of Congress and Officers and Employees of the Legislative Branch.—

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[40] P.L. 101-280, §2(a)(5)(B)(i)(I), inserted "specified in or".

[41] P.L. 101-280, §2(a)(5)(B)(i)(II), struck out "or a comparable or greater rate of pay under other authority,".

[42] P.L. 101-509, §101(b)(8)(A)(i), amended subparagraph (A)(ii) in its entirety.

[43] P.L. 101-280, §2(a)(5)(B)(iii), struck out subparagraph (C) and redesignated subparagraph (D) as subparagraph (C). The stricken subparagraph (C) read as follows:

> "(C) Subparagraph (A)(ii) includes persons employed in the Senior Executive Service at the basic rate of pay specified in that subparagraph."

[44] P.L. 101-280, §2(a)(6)(A), struck out "paid" and substituted "in the executive branch of the United States (including any independent agency)".

[45] P.L. 101-280, §2(a)(6)(B)(i), struck out "Entities to which restrictions apply" and substituted "Persons who may not be contacted".

[46] P.L. 101-280, §2(a)(6)(B)(ii), struck out "other".

(1) MEMBERS OF CONGRESS AND ELECTED OFFICERS.—(A) Any person who is a Member of Congress or an elected officer of either House of Congress and who, within 1 year after that person leaves office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B) or (C), on behalf of any other person (except the United States) in connection with any matter on which such former Member of Congress or elected officer seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former Member of Congress are any Member, officer, or employee of either House of Congress, and any employee of any other legislative office of the Congress.

(C) The persons referred to in subparagraph (A) with respect to appearances or communications by a former elected officer are any Member, officer, or employee of the House of Congress in which the elected officer served.

(2) PERSONAL STAFF.—(A) Any person who is an employee of a Senator or an employee of a Member of the House of Representatives and who, within 1 year after the termination of that employment, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a person who is a former employee are the following:

(i) the Senator or Member of the House of Representatives for whom that person was an employee; and

(ii) any employee of that Senator or Member of the House of Representatives.

(3) COMMITTEE STAFF.—Any person who is an employee of a committee of Congress and who, within 1 year after the termination of that person's employment on such committee, knowingly makes, with the intent to influence, any communication to or appearance before any person who is a Member or an employee of that committee or who was a Member of the committee in the year immediately prior to the termination of such person's employment by the committee, on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(4) LEADERSHIP STAFF.—(A) Any person who is an employee on the leadership staff of the House of Representatives or an employee on the leadership staff of the Senate and who, within 1 year after the termination of that person's employment on such staff, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by a Member, officer, or employee of either House of Congress, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the following:

(i) in the case of a former employee on the leadership staff of the House of Representatives, those persons are any Member of the leadership of the House of Representatives and any employee on the leadership staff of the House of Representatives; and

(ii) in the case of a former employee on the leadership staff of the Senate, those persons are any Member of the leadership of the Senate and any employee on the leadership staff of the Senate.

(5) OTHER LEGISLATIVE OFFICES.—(A) Any person who is an employee of any other legislative office of the Congress and who, within 1 year after the termination of that person's employment in such office, knowingly makes, with the intent to influence, any communication to or appearance before any of the persons described in subparagraph (B), on behalf of any other person (except the United States) in connection with any matter on which such former employee seeks action by any officer or employee of such office, in his or her official capacity, shall be punished as provided in section 216 of this title.

(B) The persons referred to in subparagraph (A) with respect to appearances or communications by a former employee are the employees and officers of the former legislative office of the Congress of the former employee.

(6) LIMITATION ON RESTRICTIONS.—The restrictions contained in paragraphs (2), (3), and (4) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was paid a rate of basic pay equal to or greater than an amount which is 75 percent of the basic rate of pay payable for a Member of the House of Congress in which such employee was employed.

(B) The restrictions contained in paragraph (5) apply only to acts by a former employee who, for at least 60 days, in the aggregate, during the 1-year period before that former employee's service as such employee terminated, was employed in a position for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the basic rate of pay payable for level V of the Executive Schedule.[47]

(7) DEFINITIONS.—As used in this subsection—

(A) the term "committee of Congress" includes standing committees, joint committees, and select committees;

(B) a person is an employee of a House of Congress if that person is an employee of the Senate or an employee of the House of Representatives;

(C) the term "employee of the House of Representatives" means an employee of a Member of the House of Representatives, an employee of a committee of the House of Representatives, an employee of a joint committee of the Congress whose pay is disbursed by the Clerk of the House of Representatives, and an employee on the leadership staff of the House of Representatives;

(D) the term "employee of the Senate" means an employee of a Senator, an employee of a committee of the Senate, an employee of a joint committee of the Congress whose pay is disbursed by the Secretary of the Senate, and an employee on the leadership staff of the Senate;

(E) a person is an employee of a Member of the House of Representatives if that person is an employee of a Member of the House of Representatives under the clerk hire allowance;

(F) a person is an employee of a Senator if that person is an employee in a position in the office of a Senator;

(G) the term "employee of any other legislative office of the Congress" means an officer or employee of the Architect of the Capitol, the United States Botanic Garden, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the Copyright Royalty Tribunal, the United States Capitol Police, and any other agency, entity, or office in the legislative branch not covered by paragraph (1), (2), (3), or (4) of this subsection;

(H) the term "employee on the leadership staff of the House of Representatives" means an employee of the office of a Member of the leadership of the House of Representatives described in subparagraph (L), and any elected minority employee of the House of Representatives;

(I) the term "employee on the leadership staff of the Senate" means an employee of the office of a Member of the leadership of the Senate described in subparagraph (M);

(J) the term "Member of Congress" means a Senator or a Member of the House of Representatives;

(K) the term "Member of the House of Representatives" means a Representative in, or a Delegate or Resident Commissioner to, the Congress;

(L) the term "Member of the leadership of the House of Representatives" means the Speaker, majority leader, minority leader, majority whip, minority whip, chief deputy majority whip, chief deputy minority whip, chairman of the Democratic Steering Committee, chairman and vice chairman of the Democratic Caucus, chairman, vice chairman, and secretary of the Republican Conference, chairman of the Republican Research Committee, and chairman of the Republican Policy Committee, of the House of Representatives (or any similar position created on or[48] after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989);

(M) the term "Member of the leadership of the Senate" means the Vice President, and the President pro tempore, Deputy President pro tempore, majority leader, minority leader, majority whip, minority whip, chairman and secretary of the Conference of the Majority, chairman and secretary of the Conference of the Minority, chairman and co-chairman of the Majority Policy

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[47] P.L. 101-509, §101(b)(8)(A)(ii), amended paragraph (6) in its entirety.

[48] P.L. 101-280, §2(a)(7)(B), inserted "on or".

Committee, and chairman of the Minority Policy Committee, of the Senate (or any similar position created on or[49] after the effective date set forth in section 102(a) of the Ethics Reform Act of 1989).

(f) RESTRICTIONS RELATING TO FOREIGN ENTITIES.—

(1) RESTRICTIONS.—Any person who is subject to the restrictions contained in subsection (c), (d), or (e) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection[50]—

(A) represents [51] a foreign entity before any officer or employee of any department or agency [52] of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency [53] of the United States, in carrying out his or her official duties,

shall be punished as provided in section 216 of this title.

(2) DEFINITION.—For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in section 1(f) of that Act.

(g) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) DESIGNATIONS OF SEPARATE STATUTORY AGENCIES AND BUREAUS.—

(1) DESIGNATIONS.—For purposes of subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph.

(2) INAPPLICABILITY OF DESIGNATIONS.—No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in subsection (c)(2)(A)(i) or (iii).

(i) DEFINITIONS.—For purposes of this section—

(1) the term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include—

(A) in subsections (a), (c), and (d), the President and the Vice President; and

(B) in subsection (f), the President, the Vice President, and Members of Congress,[54]

(2) the term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) the term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) EXCEPTIONS.—

(1) OFFICIAL GOVERNMENT DUTIES.—The restrictions contained in this section[55] shall not apply to acts done in carrying out official duties on behalf[56] of the United States or the District of Columbia[57] or as an elected official of a State or local

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[49] P.L. 101-280, §2(a)(7)(B), inserted "on or".

[50] P.L. 101-280, §2(a)(8)(A), struck out "subsection (c), (d), or (e), as the case may be" and substituted "such subsection".

[51] P.L. 101-280, §2(a)(8)(B)(i), struck out "the interests of".

[52] P.L. 101-280, §2(a)(8)(B)(ii), struck out "of the Government".

[53] P.L. 101-280, §2(a)(8)(C), struck out "of the Government".

[54] P.L. 101-280, §2(a)(9), amended paragraph (1) in its entirety. Formerly, paragraph (1) read as follows:

> "(1) the term 'intent to influence' means the intent to affect any official action by a Government entity of the United States through any officer or employee of the United States, including Members of Congress;".

[55] P.L. 101-280, §2(a)(10)(A)(i), struck out "subsections (a), (c), (d), and (e)" and substituted "this section".

[56] P.L. 101-280, §2(a)(10)(A)(ii), struck out "as an officer or employee" and substituted "on behalf".

[57] P.L. 101-280, §2(a)(10)(A)(iii), struck out "Government" and substituted "or the District of Columbia".

government.

(2) STATE AND LOCAL GOVERNMENTS AND INSTITUTIONS, HOSPITALS, AND ORGANIZATIONS.—The restrictions contained in subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of—

(A) an agency or instrumentality of a State or local government if the appearance, communication, or representation is on behalf of such government, or

(B) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) INTERNATIONAL ORGANIZATIONS.—The restrictions contained in this section[58] shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States[59].

(4) SPECIAL[60] KNOWLEDGE.—The restrictions contained in subsections (c), (d), and (e) shall not [61] prevent an individual[62] from making or providing a statement, which is based on the individual's[63] own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received[64].

(5) EXCEPTION FOR SCIENTIFIC OR TECHNOLOGICAL INFORMATION.—The restrictions contained in subsections (a), (c), and (d)[65] shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.[66]

(6) EXCEPTION FOR TESTIMONY.—Nothing in this section shall prevent an individual[67] from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence—

(A) a former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) a former officer or employee of the District of Columbia who is subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.[68]

§208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or[69] of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer of employee[70] of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general[71] partner, organization in which he is serving as officer, director, trustee, general[72] partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

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[58] P.L. 101-280, §2(a)(10)(B)(i), struck out "subsections (c), (d), and (e)" and substituted "this section".

[59] P.L. 101-280, §2(a)(10)(B)(ii), struck out "of which the United States is a member" and substituted "in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States".

[60] P.L. 101-280, §2(a)(10)(C)(i), struck out "PERSONAL MATTERS AND SPECIAL" and substituted "SPECIAL".

[61] P.L. 101-280, §2(a)(10)(C)(ii), struck out "apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibitions of those subsections".

[62] P.L. 101-280, §2(a)(10)(C)(iii), struck out "a former officer or employee" and substituted "an individual".

[63] P.L. 101-280, §2(a)(10)(C)(iv), struck out "former officer's or employee's" and substituted "individual's".

[64] P.L. 101-280, §2(a)(10)(C)(v), struck out ", other than that regularly provided for by law or regulation for witnesses".

[65] P.L. 101-280, §2(a)(10)(D)(i), struck out "(d), and (e)" and substituted "and (d)".

[66] P.L. 101-280, §2(a)(10)(D)(ii), added this sentence.

[67] P.L. 101-280, §2(a)(10)(E)(i), struck out "a former Member of Congress or officer or employee of the executive or legislative branch or an independent agency (including the Vice President and any special Government employee)" and substituted "an individual".

[68] P.L. 101-280, §2(a)(10)(E)(ii), struck out ", a former officer or employee subject to the restrictions contained in subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter." and substituted a dash and subparagraphs (A) and (B).

[69] P.L. 101-194, §405(1)(A), inserted "or".

Shall be subject to the penalties set forth in section 216 of this title[73].

(b) Subsection (a) shall not apply—

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

(2) if, by regulation issued by the Director of the Office of Government Ethics, applicable to all or a portion of all officers and employees covered by this section, and published in the Federal Register, the financial interest has been exempted from the requirements of subsection (a)[74] as being too remote or too inconsequential to affect the integrity of the services of the Government officers or employees to which such regulation applies;

(3) in the case of a special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (including an individual being considered for an appointment to such a position), the official responsible for the employee's appointment, after review of the financial disclosure report filed by the individual pursuant to [75] the Ethics in Government Act of 1978, certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved; or

(4) the financial interest that would be affected by the particular matter involved is that resulting solely from the interest of the officer or employee, or his or her spouse or minor child, in birthrights—

(A) in an Indian tribe, band, nation, or other organized group or community, including any Alaska Native village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians,

(B) in an Indian allotment the title to which is held in trust by the United States or which is inalienable by the allottee without the consent of the United States, or

(C) in an Indian claims fund held in trust or administered by the United States,

if the particular matter does not involve the Indian allotment or claims fund or the Indian tribe, band, nation, organized group or community, or Alaska Native village corporation as a specific party or parties.[76]

(c)(1) For the purpose of paragraph (1) of subsection (b), in the case of class A and B directors of Federal Reserve Banks, the Board of Governors of the Federal Reserve System shall be deemed to be the Government official responsible for appointment.

(2) The potential availability of an exemption under any particular paragraph of subsection (b) does not preclude an exemption being granted pursuant to another paragraph of subsection (b).[77]

(d)(1) Upon request, a copy of any determination granting an exemption under subsection (b)(1) or (b)(3) shall be made available to the public by the agency granting the exemption pursuant to the procedures set forth in section 105 of the Ethics in Government Act of 1978. In making such determination available, the agency may withhold from disclosure any information contained in the determination that would be exempt from disclosure under section 552 of title 5. For purposes of determinations under subsection (b)(3), the information describing each financial interest shall be no more extensive than that required of the individual in his or her financial disclosure report under the Ethics in Government Act of 1978.[78]

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[70] P.L. 101-194, §405(1)(B), inserted "an officer of employee".

[71] P.L. 101-194, §405(1)(C), inserted "general".

[72] P.L. 101-194, §405(1)(C), inserted "general".

[73] P.L. 101-194, §405(1)(D), struck out "fined not more than $10,000, or imprisoned not more than two years, or both" and substituted "subject to the penalties set forth in section 216 of this title".

[74] P.L. 101-280, §5(e)(1)(A), struck out "paragraph (1)" and substituted "subsection (a)".

[75] P.L. 101-280, §5(e)(1)(B), struck out "section 107 of".

[76] P.L. 101-194, §405(2), amended subsection (b) in its entirety.

[77] P.L. 101-194, §405(2), added subsection (c).

(2) The Office of Government Ethics, after consultation with the Attorney General, shall issue uniform regulations for the issuance of waivers and exemptions under subsection (b) which shall—

(A) list and describe exemptions; and

(B) provide guidance with respect to the types of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from the employee.[79]

§209. Salary of Government officials and employees payable only by United States

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be subject to the penalties set forth in section 216 of this title[80].

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the chapter 41 of title 5.[81]

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided*, That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days or, in the case of participants in overseas assignments, in excess of three hundred and sixty-five days.

(f) This section does not prohibit acceptance or receipt, by any officer or employee injured during the commission of an offense described in section 351 or 1751 of this title, of contributions or payments from an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1954 and which is exempt from taxation under section 501(a) of such Code.

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CHAPTER 37—ESPIONAGE AND CENSORSHIP

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[78] P.L. 101-280, §5(e)(1)(C), amended paragraph (1) in its entirety. Formerly, paragraph (1) read as follows:

"(1) A copy of any determination by other than the Director of the Office
of Government Ethics granting an exemption pursuant to subsection (b)(1) or (b)(3)
shall be submitted to the Director, who shall make all determinations available
to the public pursuant to section 105 of the Ethics in Government Act of 1978.
For determinations pursuant to subsection (b)(3), the information from the
financial disclosure report of the officer or employee involved describing the asset or
assets that necessitated the waiver shall also be made available to the public. This
subsection shall not apply, however, if the head of the agency or his or her designee
determines that the determination under subsection (b)(1) or (b)(3), as the case may
be, involves classified information.".

[79] P.L. 101-194, §405(2), added subsection (d).

[80] P.L. 101-194, §406, struck out "fined not more than $5,000 or imprisoned not more than one year, or both" and substituted "subject to the penalties set forth in section 216 of this title".

[81] P.L. 101-647, §3510, struck out "Government Employees Training Act (Public Law 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958)." and substituted "chapter 41 of title 5.". As in original; possibly should have also stricken "the".

§792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

§793. Gathering, transmitting or losing defense information

(a) Whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers, departments, or agencies, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of its trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his superior officer—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

§794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or connected with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c) and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.

§795. Photographing and sketching defense installations

(a) Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station, or naval vessels, military and naval aircraft, and any separate military or naval command concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary.

(b) Whoever violates this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§796. Use of aircraft for photographing defense installations

Whoever uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in the air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of vital military or naval installations or equipment, in violation of section 795 of this title, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§797. Publication and sale of photographs of defense installations

On and after thirty days from the date upon which the President defines any vital military or naval installation or equipment as being within the category contemplated under section 795 of this title, whoever reproduces, publishes, sells, or gives away any photograph, sketch, picture, drawing, map, or graphical representation of the vital military or naval installations or equipment so defined, without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, unless such photograph, sketch, picture, drawing, map, or graphical representation has clearly indicated thereon that it has been censored by the proper military or naval authority, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§798. Disclosure of classified information[82]

(a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified information—

(1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or

(2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or

(3) concerning the communication intelligence activities of the United States or any foreign government; or

(4) obtained by the process of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in subsection (a) of this section—

The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

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[82] So enacted. See second section 798 enacted on June 30, 1953, set out below.

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

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CHAPTER 47—FRAUD AND FALSE STATEMENTS

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§1028. Fraud and related activity in connection with identification documents

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document or a false identification document;

(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor) or false identification documents;

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor) or a false identification document, with the intent such document be used to defraud the United States; or

(5) knowingly produces, transfers, or possesses a document-making implement with the intent such document-making implement will be used in the production of a false identification document or another document-making implement which will be so used;

(6) knowingly possesses an identification document that is or appears to be an identification document of the United States which is stolen or produced without lawful authority knowing that such document was stolen or produced without such authority;

or attempts to do so, shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) a fine of not more than $25,000 or imprisonment for not more than five years, or both, if the offense is—

(A) the production or transfer of an identification document or false identification document that is or appears to be—

(i) an identification document issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents or false identification documents; or

(C) an offense under paragraph (5) of such subsection;

(2) a fine of not more than $15,000 or imprisonment for not more than three years, or both, if the offense is—

(A) any other production or transfer of an identification document or false identification document; or

(B) an offense under paragraph (3) of such subsection; and

(3) a fine of not more than $5,000 or imprisonment for not more than one year, or both, in any other case.

(c) The circumstance referred to in subsection (a) of this section is that—

(1) the identification document or false identification document is or appears to be issued by or under the authority of the United States or the document-making implement is designed or suited for making such an identification document or false identification document;

(2) the offense is an offense under subsection (a)(4) of this section; or

(3) the production, transfer, or possession prohibited by this section is in or affects interstate or foreign commerce, or the identification document, false identification document, or document-making implement is transported in the mail in the course of the production, transfer, or possession prohibited by this section.

(d) As used in this section—

(1) the term "identification document" means a document made or issued by or under the authority of the United States Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals;

(2) the term "produce" includes alter, authenticate, or assemble;

(3) the term "document-making implement" means any implement or impression specially designed or primarily used for making an identification document, a false identification document, or another document-making implement;

(4) the term "personal identification card" means an identification document issued by a State or local government solely for the purpose of identification; and

(5) the term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth[83] possession or territory of the United States.

(e) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under chapter 224 of this title.

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CHAPTER 83—POSTAL SERVICE

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§1738. Mailing private identification documents without a disclaimer

(a) Whoever, being in the business of furnishing identification documents for valuable consideration, and in the furtherance of that business, uses the mails for the mailing, carriage in the mails, or delivery of, or causes to be transported in interstate or foreign commerce, any identification document—

(1) which bears a birth date or age purported to be that of the person named in such identification document; and

(2) knowing that such document fails to carry diagonally printed clearly and indelibly on both the front and back "NOT A GOVERNMENT DOCUMENT" in capital letters in not less than twelve point type;

shall be fined not more than $1,000, imprisoned not more than one year, or both.

(b) For purposes of this section the term "identification document" means a document which is of a type intended or commonly accepted for the purpose of identification of individuals and which is not issued by or under the authority of a government.

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CHAPTER 105—SABOTAGE

§2151. Definitions

As used in this chapter:

The words "war material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all articles, parts or ingredients, intended for, adapted to, or suitable for the use of the United States or any associate nation, in connection with the conduct of war or defense activities.

The words "war premises" include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States, or any associate nation.

The words "war utilities" include all railroads, railways, electric lines, roads of whatever description, any railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which air, water or gas is being furnished, or may be furnished, to any war premises or to the Armed Forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures, and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any war premises or to the Armed Forces of the United States, or any associate nation.

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[83] P.L. 101-647, §1205(e), inserted "commonwealth".

The words "associate nation" mean any nation at war with any nation with which the United States is at war.

The words "national-defense material" include arms, armament, ammunition, livestock, forage, forest products and standing timber, stores of clothing, air, water, food, foodstuffs, fuel, supplies, munitions, and all other articles of whatever description and any part or ingredient thereof, intended for, adapted to, or suitable for the use of the United States in connection with the national defense or for use in or in connection with the producing, manufacturing, repairing, storing, mining, extracting, distributing, loading, unloading, or transporting of any of the materials or other articles hereinbefore mentioned or any part or ingredient thereof.

The words "national-defense premises" include all buildings, grounds, mines, or other places wherein such national-defense material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other installations of the Armed Forces of the United States.

The words "national-defense utilities" include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, aircraft, airfields, air lanes, and fixtures or appurtenances thereof, or any other means of transportation whatsoever, whereon or whereby such national-defense material, or any troops of the United States, are being or may be transported either within the limits of the United States or upon the high seas or elsewhere; and all air-conditioning systems, dams, reservoirs, aqueducts, water and gas mains and pipes, structures, and buildings, whereby or in connection with which air, water, or gas may be furnished to any national-defense premises or to the Armed Forces of the United States, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply air, water, light, heat, power, or facilities of communication to any national-defense premises or to the Armed Forces of the United States.

§2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

§2153. Destruction of war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any war material, war premises, or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2154. Production of defective war material, war premises, or war utilities

(a) Whoever, when the United States is at war, or in times of national emergency as declared by the President or by the Congress, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, or, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war or defense activities, willfully makes, constructs, or causes to be made or constructed in a defective manner, or attempts to make, construct, or cause to be made or constructed in a defective manner any war material, war premises or war utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, war premises or war utilities, shall be fined not more than $10,000 or imprisoned not more than thirty years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2155. Destruction of national-defense materials, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully injures, destroys, contaminates or infects, or attempts to so injure, destroy, contaminate or infect any national-defense material, national-defense premises, or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

§2156. Production of defective national-defense material, national-defense premises or national-defense utilities

(a) Whoever, with intent to injure, interfere with, or obstruct the national defense of the United States, willfully makes, constructs, or attempts to make or construct in a defective manner, any national-defense material, national-defense premises or national-defense utilities, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such national-defense material, national-defense premises or national-defense utilities, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in subsection (a) of this section.

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CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

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§2381. Treason

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.

§2382. Misprision of treason

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined not more than $1,000 or imprisoned not more than seven years, or both.

§2383. Rebellion or insurrection

Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.

§2384. Seditious conspiracy

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than $20,000 or imprisoned not more than twenty years, or both.

§2385. Advocating overthrow of Government

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

If two or more persons conspire to commit any offense named in this section, each shall be fined not more than $20,000 or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

As used in this section, the terms "organizes" and "organize", with respect to any society, group, or assembly of persons, include the recruiting of new members, the forming of new units, and the regrouping or expansion of existing clubs, classes, and other units of such society, group, or assembly of persons.

§2386. Registration of certain organizations

(A) For the purposes of this section:

"Attorney General" means the Attorney General of the United States;

"Organization" means any group, club, league, society, committee, association, political party, or combination of individuals, whether incorporated or otherwise, but such term shall not include any corporation, association, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes;

"Political activity" means any activity the purpose or aim of which, or one of the purposes or aims of which, is the control by force or overthrow of the Government of the United States or a political subdivision thereof, or any State or political subdivision thereof;

An organization is engaged in "civilian military activity" if:

(1) it gives instruction to, or prescribes instruction for, its members in the use of firearms or other weapons or any substitute therefor, or military or naval science; or

(2) it receives from any other organization or from any individual instruction in military or naval science; or

(3) it engages in any military or naval maneuvers or activities; or

(4) it engages, either with or without arms, in drills or parades of a military or naval character; or

(5) it engages in any other form of organized activity which in the opinion of the Attorney General constitutes preparation for military action;

An organization is "subject to foreign control" if:

(a) it solicits or accepts financial contributions, loans, or support of any kind, directly or indirectly, from, or is affiliated directly or indirectly with, a foreign government or a political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or political subdivision thereof, or a political party in a foreign country, or an international political organization; or

(b) its policies, or any of them, are determined by or at the suggestion of, or in collaboration with, a foreign government or political subdivision thereof, or an agent, agency, or instrumentality of a foreign government or a political subdivision thereof, or a political party in a foreign country, or an international political organization.

(B)(1) The following organizations shall be required to register with the Attorney General:

Every organization subject to foreign control which engages in political activity;

Every organization which engages both in civilian military activity and in political activity;

Every organization subject to foreign control which engages in civilian military activity; and

Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing.

Every such organization shall register by filing with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a registration statement containing the information and documents prescribed in subsection (B)(3) and shall within thirty days after the expiration of each period of six months succeeding the filing of such registration statement, file with the Attorney General, on such forms and in such detail as the Attorney General may by rules and regulations prescribe, a supplemental statement containing such information and documents as may be necessary to make the information and documents previously filed under this section accurate and current with respect to such preceding six months' period. Every statement required to be filed by this section shall be subscribed, under oath, by all of the officers of the organization.

(2) This section shall not require registration or the filing of any statement with the Attorney General by:

(a) The armed forces of the United States; or

(b) The organized militia or National Guard of any State, Territory, District, or possession of the United States; or

(c) Any law-enforcement agency of the United States or of any Territory, District or possession thereof, or of any State or political subdivision of a State, or of any agency or instrumentality of one or more States; or

(d) Any duly established diplomatic mission or consular office of a foreign government which is so recognized by the Department of State; or

(e) Any nationally recognized organization of persons who are veterans of the armed forces of the United States, or affiliates of such organizations.

(3) Every registration statement required to be filed by any organization shall contain the following information and documents:

(a) The name and post-office address of the organization in the United States, and the names and addresses of all branches, chapters, and affiliates of such organization;

(b) The name, address, and nationality of each officer, and of each person who performs the functions of an officer, of the organization, and of each branch, chapter, and affiliate of the organization;

(c) The qualifications for membership in the organization;

(d) The existing and proposed aims and purposes of the organization, and all the means by which these aims or purposes are being attained or are to be attained;

(e) The address or addresses of meeting places of the organization, and of each branch, chapter, or affiliate of the organization, and the times of meetings;

(f) The name and address of each person who has contributed any money, dues, property, or other thing of value to the organization or to any branch, chapter, or affiliate of the organization;

(g) A detailed statement of the assets of the organization, and of each branch, chapter, and affiliate of the organization, the manner in which such assets were acquired, and a detailed statement of the liabilities and income of the organization and of each branch, chapter, and affiliate of the organization;

(h) A detailed description of the activities of the organization, and of each chapter, branch, and affiliate of the organization;

(i) A description of the uniforms, badges, insignia, or other means of identification prescribed by the organization, and worn or carried by its officers or members, or any of such officers or members;

(j) A copy of each book, pamphlet, leaflet, or other publication or item of written, printed, or graphic matter issued or distributed directly or indirectly by the organization, or by any chapter, branch, or affiliate of the organization, or by any of the members of the organization under its authority or within its knowledge, together with the name of its author or authors and the name and address of the publisher;

(k) A description of all firearms or other weapons owned by the organization, or by any chapter, branch, or affiliate of the organization, identified by the manufacturer's number thereon;

(l) In case the organization is subject to foreign control, the manner in which it is so subject;

(m) A copy of the charter, articles of association, constitution, bylaws, rules, regulations, agreements, resolutions, and all other instruments relating to the organization, powers, and purposes of the organization and to the powers of the officers of the organization and of each chapter, branch, and affiliate of the organization; and

(n) Such other information and documents pertinent to the purposes of this section as the Attorney General may from time to time require.

All statements filed under this section shall be public records and open to public examination and inspection at all reasonable hours under such rules and regulations as the Attorney General may prescribe.

(C) The Attorney General is authorized at any time to make, amend, and rescind such rules and regulations as may be necessary to carry out this section, including rules and regulations governing the statements required to be filed.

(D) Whoever violates any of the provisions of this section shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Whoever in a statement filed pursuant to this section willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statements made not misleading, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

§2387. Activities affecting armed forces generally

(a) Whoever, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States:

(1) advises, counsels, urges, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or

(2) distributes or attempts to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

(b) For the purposes of this section, the term "military or naval forces of the United States" includes the Army of the United States, the Navy, Air Force, Marine Corps, Coast Guard, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve of the United States; and, when any merchant vessel is commissioned in the Navy or is in the service of the Army or the Navy, includes the master, officers, and crew of such vessel.

§2388. Activities affecting armed forces during war

(a) Whoever, when the United States is at war, willfully makes or conveys false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies; or

Whoever, when the United States is at war, willfully causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or willfully obstructs the recruiting or enlistment service of the United States, to the injury of the service or the United States, or attempts to do so—

Shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) If two or more persons conspire to violate subsection (a) of this section and one or more such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as provided in said subsection (a).

(c) Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under this section, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(d) This section shall apply within the admiralty and maritime jurisdiction of the United States, and on the high seas, as well as within the United States.

§2389. Recruiting for service against United States

Whoever recruits soldiers or sailors within the United States, or in any place subject to the jurisdiction thereof, to engage in armed hostility against the same; or

Whoever opens within the United States, or in any place subject to the jurisdiction thereof, a recruiting station for the enlistment of such soldiers or sailors to serve in any manner in armed hostility against the United States—

Shall be fined not more than $1,000 or imprisoned not more than five years, or both.

§2390. Enlistment to serve against United States

Whoever enlists or is engaged within the United States or in any place subject to the jurisdiction thereof, with intent to serve in armed hostility against the United States, shall be fined $100 or imprisoned not more than three years, or both.

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[*Internal References.*—S.S. Act §§202(u), 208(a) and (b), §1114(h), 1882(d), and §1902(a)(4) cite title 18, U.S. Code; and the catchlines for S.S. Act §§208, 1107, 1128B, and 1632 have footnotes referring to title 18, U.S. Code.]

TITLE 22, UNITED STATES CODE

Foreign Relations and Intercourse

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§3310. Employment of United States Government agency personnel

(a) Separation from Government service; reemployment or reinstatement upon termination of Institute employment; benefits

(1) Under such terms and conditions as the President may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts employment with the Institute.

(2) An officer or employee separated by an agency under paragraph (1) of this subsection for employment with the Institute shall be entitled upon termination of such employment to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits with[1] the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(3) An officer or employee entitled to reemployment or reinstatement rights under paragraph (2) of this subsection shall, while continuously employed by the Institute with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to employment by the Institute, including programs for compensation for job-related death, injury, or illness; programs for health and life insurance; programs for annual, sick, and other statutory leave; and programs for retirement under any system established by the laws of the United States; except that employment with the Institute shall be the basis for participation in such programs only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

(4) Any officer or employee of an agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to April 10, 1979, shall receive the benefits of this section for the period of such service.

(b) Employment of aliens on Taiwan

Any agency of the United States Government employing alien personnel on Taiwan may transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by the laws of the United States for the retirement of employees in which the alien was participating prior to the transfer to the Institute, except that employment with the Institute shall be creditable for retirement purposes only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, are currently deposited in the system's fund or depository.

(c) Institute employees not deemed United States employees

Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18.

(d) Tax treatment of amounts paid Institute employees

(1) For purposes of sections 911 and 913 of title 26, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of title 26.

(2) Except to the extent required by subsection (a)(3) of this section, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of title 26 and title II of the Social Security Act [42 U.S.C. 401 et seq.].

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[1] As in original. Probably should be "which".

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[*Internal Reference.*—S.S. Act §210(a) cites title 22, U.S. Code.]

TITLE 28, UNITED STATES CODE

JUDICIARY AND JUDICIAL PROCEDURE

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§294. Assignment of retired Justices or judges to active duty

(a) Any retired Chief Justice of the United States or Associate Justice of the Supreme Court may be designated and assigned by the Chief Justice of the United States to perform such judicial duties in any circuit, including those of a circuit justice, as he is willing to undertake.

(b) Any judge of the United States who has retired from regular active service under section 371(b) or 372(a) of this title shall be known and designated as a senior judge and may continue to perform such judicial duties as he is willing and able to undertake, when designated and assigned as provided in subsections (c) and (d).

(c) Any retired circuit or district judge may be designated and assigned by the chief judge or judicial council of his circuit to perform such judicial duties within the circuit as he is willing and able to undertake. Any other retired judge of the United States may be designated and assigned by the chief judge of his court to perform such judicial duties in such court as he is willing and able to undertake.

(d) The Chief Justice of the United States shall maintain a roster of retired judges of the United States who are willing and able to undertake special judicial duties from time to time outside their own circuit, in the case of a retired circuit or district judge, or in a court other than their own, in the case of other retired judges, which roster shall be known as the roster or senior judges. Any such retired judge of the United States may be designated and assigned by the Chief Justice to perform such judicial duties as he is willing and able to undertake in a court outside his own circuit, in the case of a retired circuit or district judge, or in a court other than his own, in the case of any other retired judge of the United States. Such designation and assignment to a court of appeals or district court shall be made upon the presentation of a certificate of necessity by the chief judge or circuit justice of the circuit wherein the need arises and to any other court of the United States upon the presentation of a certificate of necessity by the chief judge of such court. No such designation or assignment shall be made to the Supreme Court.

(e) No retired justice or judge shall perform judicial duties except when designated and assigned.

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§371. Retirement on salary; retirement in senior status

(a) Any justice or judge of the United States appointed to hold office during good behavior may retire from the office after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) and shall, during the remainder of his lifetime, receive an annuity equal to the salary he was receiving at the time he retired.

(b)(1)[1] Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her[2] lifetime, continue to receive the salary of the office if he or she meets the requirements of subsection (f)[3].

(2) In a case in which a justice or judge who retires under paragraph (1) does not meet the requirements of subsection (f), the justice or judge shall continue to receive the salary that he or she was receiving when he or she was last in active service or, if a certification under subsection (f) was made for such justice or judge, when such a certification was last in effect. The salary of such justice or judge shall be adjusted under section 461 of this title.[4]

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[1] P.L. 101-194, §705(a)(1)(A), inserted "(1)".

[2] P.L. 101-194, §705(a)(1)(B), inserted "or her".

[3] P.L. 101-194, §705(a)(1)(C), inserted "if he or she meets the requirements of subsection (f)".

[4] P.L. 101-194, §705(a)(1)(C), added paragraph (2).

(c) The age and service requirements for retirement under this section are as follows:

Attained age:	Years of service:
65	15
66	14
67	13
68	12
69	11
70	10

(d) The President shall appoint, by and with the advice and consent of the Senate, a successor to a justice or judge who retires under this section.

(e) Notwithstanding subsection (c) of section 5532 of title 5, if a regular or reserve member or former member of a uniformed service who is receiving retired or retainer pay becomes employed as a justice or judge of the United States, as defined by section 451, or becomes eligible therefor while so employed, such retired or retainer pay shall not be paid during regular active service as a justice or judge, but shall be resumed or commenced without reduction upon retirement from the judicial office or from regular active service (into senior status) as such justice or judge.

(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(C) The justice or judge has, in the preceding calendar year, performed work described in subparagraphs (A) and (B) in an amount which, when calculated in accordance with such subparagraphs, in the aggregate equals at least 3 months work.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch.

(E) The justice or judge was unable in the preceding calendar year to perform judicial or administrative work to the extent required by any of subparagraphs (A) through (D) because of a temporary or permanent disability. A certification under this subparagraph shall be made to a justice who certifies in writing his or her disability to the Chief Justice, and to a judge who certifies in writing his or her disability to the chief judge of the circuit in which the judge sits. A justice or judge who is certified under this subparagraph as having a permanent disability shall be deemed to have met the requirements of this subsection for each calendar year thereafter.

(2) Determinations of work performed under subparagraphs (A), (B), (C), and (D) of paragraph (1) shall be made pursuant to rules promulgated by the Judicial Conference of the United States. In promulgating such criteria, the Judicial Conference shall take into account existing standards promulgated by the Conference for allocation of space and staff for senior judges.

(3) If in any year a justice or judge who retires under subsection (b) does not receive a certification under this subsection (except as provided in paragraph (1)(E)), he or she is thereafter ineligible to receive such a certification.

(4) In the case of any justice or judge who retires under subsection (b) during a calendar year, there shall be included in the determination under this subsection of work performed during that calendar year all work performed by that justice or judge

(as described in subparagraphs (A), (B), (C), and (D) of paragraph (1)) during that calendar year before such retirement.[5]

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§1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

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§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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§1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1954.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

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[5] P.L. 101-194, §705(a)(2), added subsection (f).

§2112. Record on review and enforcement of agency orders

(a) The rules prescribed under the authority of section 2072 of this title may provide for the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers. Such rules may authorize the agency, board, commission, or officer to file in the court a certified list of the materials comprising the record and retain and hold for the court all such materials and transmit the same or any part thereof to the court, when and as required by it, at any time prior to the final determination of the proceeding, and such filing of such certified list of the materials comprising the record and such subsequent transmittal of any such materials when and as required shall be deemed full compliance with any provision of law requiring the filing of the record in the court. The record in such proceedings shall be certified and filed in or held for and transmitted to the court of appeals by the agency, board, commission, or officer concerned within the time and in the manner prescribed by such rules. If proceedings are instituted in two or more courts of appeals with respect to the same order, the following shall apply:

(1) If within ten days after issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in at least two courts of appeals, the agency, board, commission, or officer shall proceed in accordance with paragraph (3) of this subsection. If within ten days after the issuance of the order the agency, board, commission, or officer concerned receives, from the persons instituting the proceedings, the petition for review with respect to proceedings in only one court of appeals, the agency, board, commission, or officer shall file the record in that court notwithstanding the institution in any other court of appeals of proceedings for review of that order. In all other cases in which proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency, board, commission, or officer concerned shall file the record in the court in which proceedings with respect to the order were first instituted.

(2) For purposes of paragraph (1) of this subsection, a copy of the petition or other pleading which institutes proceedings in a court of appeals and which is stamped by the court with the date of filing shall constitute the petition for review. Each agency, board, commission, or officer, as the case may be, shall designate by rule the office and the officer who must receive petitions for review under paragraph (1).

(3) If an agency, board, commission, or officer receives two or more petitions for review of an order in accordance with the first sentence of paragraph (1) of this subsection, the agency, board, commission, or officer shall, promptly after the expiration of the ten-day period specified in that sentence, so notify the judicial panel on multidistrict litigation authorized by section 1407 of this title, in such form as that panel shall prescribe. The judicial panel on multidistrict litigation shall, by means of random selection, designate one court of appeals, from among the courts of appeals in which petitions for review have been filed and received within the ten-day period specified in the first sentence of paragraph (1), in which the record is to be filed, and shall issue an order consolidating the petitions for review in that court of appeals. The judicial panel on multidistrict litigation shall, after providing notice to the public and an opportunity for the submission of comments, prescribe rules with respect to the consolidation of proceedings under this paragraph. The agency, board, commission, or officer concerned shall file the record in the court of appeals designated pursuant to this paragraph.

(4) Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order. Any such stay may thereafter be modified, revoked, or extended by a court of appeals designated pursuant to paragraph (3) with respect to that order or by any other court of appeals to which the proceedings are transferred.

(5) All courts in which proceedings are instituted with respect to the same order, other than the court in which the record is filed pursuant to this subsection, shall transfer those proceedings to the court in which the record is so filed. For the convenience of the parties in the interest of justice, the court in which the record is filed may thereafter transfer all the proceedings with respect to that order to any other court of appeals.

(b) The record to be filed in the court of appeals in such a proceeding shall consist of the order sought to be reviewed or enforced, the findings or report upon which it is based, and the pleadings, evidence, and proceedings before the agency, board, commission, or officer concerned, or such portions thereof (1) as the rules prescribed under the authority of section 2072 of this title may require to be included therein, or

(2) as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court in any such proceeding may consistently with the rules prescribed under the authority of section 2072 of this title designate to be included therein, or (3) as the court upon motion of a party or, after a prehearing conference, upon its own motion may by order in any such proceeding designate to be included therein. Such a stipulation or order may provide in an appropriate case that no record need be filed in the court of appeals. If, however, the correctness of a finding of fact by the agency, board, commission, or officer is in question all of the evidence before the agency, board, commission, or officer shall be included in the record except such as the agency, board, commission, or officer concerned, the petitioner for review or respondent in enforcement, as the case may be, and any intervenor in the court proceeding by written stipulation filed with the agency, board, commission, or officer concerned or in the court agree to omit as wholly immaterial to the questioned finding. If there is omitted from the record any portion of the proceedings before the agency, board, commission, or officer which the court subsequently determines to be proper for it to consider to enable it to review or enforce the order in question the court may direct that such additional portion of the proceedings be filed as a supplement to the record. The agency, board, commission, or officer concerned may, at its option and without regard to the foregoing provisions of this subsection, and if so requested by the petitioner for review or respondent in enforcement shall, file in the court the entire record of the proceedings before it without abbreviation.

(c) The agency, board, commission, or officer concerned may transmit to the court of appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies of such papers certified by an authorized officer or deputy of the agency, board, commission, or officer concerned shall be transmitted. Any original papers thus transmitted to the court of appeals shall be returned to the agency, board, commission, or officer concerned upon the final determination of the review or enforcement proceeding. Pending such final determination any such papers may be returned by the court temporarily to the custody of the agency, board, commission, or officer concerned if needed for the transaction of the public business. Certified copies of any papers included in the record or any supplemental record may also be returned to the agency, board, commission, or officer concerned upon the final determination of review or enforcement proceedings.

(d) The provisions of this section are not applicable to proceedings to review decisions of the Tax Court of the United States or to proceedings to review or enforce those orders of administrative agencies, boards, commissions, or officers which are by law reviewable or enforceable by the district courts.

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[*Internal References.*—S.S. Act §§205(h), 209(h), 304(a) and (c), 1116(a), and 1128A(e) cite title 28, U.S. Code.]

TITLE 29, UNITED STATES CODE[1]

LABOR

* * * * * * *

§206. Minimum wage

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than $3.35 an hour during the period ending March 31, 1990, not less than $3.80 an hour during the year beginning April 1, 1990, and not less than $4.25 an hour after March 31, 1991;[2]

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[1] This title has *not* been enacted into positive law. Section 206 of this title is section 6 of the Fair Labor Standards Act of 1938 (Act of June 25, 1938).

[2] P.L. 101-157, §2, amended paragraph (1) in its entirety.

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[*Internal Reference.*—S.S. Act §231(b) cites title 29, U.S. Code.]

TITLE 31, UNITED STATES CODE[1]

MONEY AND FINANCE

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§1342. Limitation on voluntary services

An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

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As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.[2]

* * * * * * *

§3111. New issue used to buy, redeem, or refund outstanding obligations

An obligation may be issued under this chapter to buy, redeem, or refund, at or before maturity, outstanding bonds, notes, certificates of indebtedness, Treasury bills, or savings certificates of the United States Government. Under regulations of the Secretary of the Treasury, money received from the sale of an obligation and other money in the general fund of the Treasury may be used in making the purchases, redemptions, or refunds.

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§3329. Withholding checks to be sent to foreign countries

(a) The Secretary of the Treasury shall prohibit a check or warrant drawn on public money from being sent to a foreign country from the United States or from a territory or possession of the United States when the Secretary decides that postal, transportation, or banking facilities generally, or local conditions in the foreign country, do not reasonably ensure that the payee—

(1) will receive the check or warrant; and

(2) will be able to negotiate it for full value.

(b)(1) If a check or warrant is prohibited from being sent to a foreign country under subsection (a) of this section, the drawer shall hold the check or warrant until the end of the calendar quarter after the date of the check or warrant.

(2) The Secretary may release the check or warrant for delivery during the calendar quarter after the date of the check or warrant if the Secretary decides that conditions have changed to ensure reasonably that the payee—

(A) will receive the check or warrant; and

(B) will be able to negotiate it for full value.

(3) Unless the Secretary otherwise directs, the drawer shall send at the end of the calendar quarter after the date of the check or warrant the—

(A) withheld check or warrant to the drawee; and

(B) report to the Secretary on—

(i) the name and address of the payee;

(ii) the date, number, and amount of the check or warrant; and

(iii) the account on which the check or warrant was drawn.

(4) The drawee shall transfer the amount of a withheld check or warrant from the account of the drawer to the special deposit account "Secretary of the Treasury, Proceeds of Withheld Foreign Checks". The check or warrant shall be marked "Paid into Withheld Foreign Check Account". After that time, the drawee shall send all withheld checks and warrants to the Comptroller General. The Comptroller General shall credit the accounts of the drawer and drawee.

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[1] P.L. 97-258, §1, codified Title 31 of the United States Code, entitled "Money and Finance".

[2] P.L. 101-508, §13213(b), added this sentence.

(c) The Secretary may pay an amount deposited in the special account under subsection (b)(4) of this section with a check drawn on the account when—

(1) a person claiming payment satisfies the Secretary of the right to the amount of the check or warrant (or satisfies the Administrator of Veterans' Affairs if the claim represents a payment under laws carried out by the Administrator); and

(2) the Secretary is reasonably ensured that the person—

(A) will receive the check or warrant; and

(B) will be able to negotiate it for full value.

(d) This section and section 3330 of this title—

(1) apply to a check or warrant whose delivery may be withheld under Executive Order 8389;

(2) do not affect a requirement for a license for delivering and paying a check in payment of a claim under subsection (c) of this section when a license is required by law to authorize delivery and payment; and

(3) do not affect a check or warrant issued for the payment of pay or goods bought by the United States Government in a foreign country.

* * * * * * *

§3720. Collection of payments

(a) Each head of an executive agency (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)) shall, under such regulations as the Secretary of the Treasury shall prescribe, provide for the timely deposit of money by officials and agents of such agency in accordance with section 3302, and for the collection and timely deposit of sums owed to such agency by the use of such procedures as withdrawals and deposits by electronic transfer of funds, automatic withdrawals from accounts at financial institutions, and a system under which financial institutions receive and deposit, on behalf of the executive agency, payments transmitted to post office lockboxes. The Secretary is authorized to collect from any agency not complying with the requirements imposed pursuant to the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a). Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the collections relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established by subsection (c).

(c) There is established in the Treasury of the United States a revolving fund to be known as the "Cash Management Improvements Fund". Sums in the fund shall be available without fiscal year limitation for the payment of expenses incurred in developing the methods of collection and deposit described in subsection (a) of this section and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

§3720A Reduction of tax refund by amount of debt[3]

(a) Any Federal agency that is owed a past-due legally enforceable debt (other than any [4] past-due support) by a named person shall, in accordance with regulations issued pursuant to subsection (d), notify the Secretary of the Treasury of the amount of such debt.

(b) No Federal agency may take action pursuant to subsection (a) with respect to any debt until such agency—

(1) notifies the person incurring such debt that such agency proposes to take action pursuant to such paragraph with respect to such debt;

(2) gives such person at least 60 days to present evidence that all or part of such debt is not past-due or not legally enforceable;

(3) considers any evidence presented by such person and determines that an amount of such debt is past due and legally enforceable; and

(4) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under paragraph (3) with respect to such debt is valid and that the agency has made reasonable efforts to obtain payment of such debt.

(c) Upon receiving notice from any Federal agency that a named person owes to such agency a past-due legally enforceable debt, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such person. If the Secretary of the Treasury finds that any such amount is payable, he shall reduce such refunds by an amount equal to the amount of such debt, pay the amount of such reduction to such agency, and notify such agency of the individual's home address.

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[3] P.L. 98-369, §2653(a)(1), added §3720A, applicable with respect to refunds payable under §6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988.

P.L. 100-203, §9402(a), amended that effective date by striking out "January" and substituting "July".

P.L. 100-485, §701(a), amended that effective date by striking out "before July 1, 1988" and substituting "on or before January 10, 1994".

[4] P.L. 101-508, §5129(b)(1), struck out "OASDI overpayment and".

(d) The Secretary of the Treasury shall issue regulations prescribing the time or times at which agencies must submit notices of past-due legally enforceable debts, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of debt to which the reduction procedure established by subsection (c) may be applied and the fee that an agency must pay to reimburse the Secretary of the Treasury for the full cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(e) Any Federal agency receiving notice from the Secretary of the Treasury that an erroneous payment has been made to such agency under subsection (c) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such agency under such subsection have been paid to such agency).

(f)(1) Subsection (a) shall apply with respect to an OASDI overpayment made to any individual only if such individual is not currently entitled to monthly insurance benefits under title II of the Social Security Act.

(2)(A) The requirements of subsection (b) shall not be treated as met in the case of the recovery of an OASDI overpayment from any individual under this section unless the notification under subsection (b)(1) describes the conditions under which the Secretary of Health and Human Services is required to waive recovery of an overpayment, as provided under section 204(b) of the Social Security Act.

(B) In any case in which an individual files for a waiver under section 204(b) of the Social Security Act within the 60-day period referred to in subsection (b)(2), the Secretary of Health and Human Services shall not certify to the Secretary of the Treasury that the debt is valid under subsection (b)(4) before rendering a decision on the waiver request under such section 204(b). In lieu of payment, pursuant to subsection (c), to the Secretary of Health and Human Services of the amount of any reduction under this subsection based on an OASDI overpayment, the Secretary of the Treasury shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary of the Treasury as appropriate by the Secretary of Health and Human Services.[5]

(g)[6] For purposes of this section—

(1) the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code);

(2) the term "past-due support" means any delinquency subject to section 464 of the Social Security Act; and

(3) the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act[7]

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§3803. Hearing and determinations

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(c) * * *

(2) * * *

(C) For purposes of this subsection, the term "benefits" means—

(i) benefits under the supplemental security income program under title XVI of the Social Security Act;

(ii) old age, survivors, and disability insurance benefits under title II of the Social Security Act;

(iii) benefits under title XVIII of the Social Security Act;

(iv) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(v) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

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[5] P.L. 101-508, §5129(b)(3), added this subsection (f).

[6] P.L. 101-508, §5129(b)(2), redesignated subsection (f) as subsection (g).

[7] As in original. No punctuation.

(vi) benefits under title XX of the Social Security Act;

(vii) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(viii) benefits under chapters 11, 13, 15, 17, and 21 of title 38;

(ix) benefits under the Black Lung Benefits Act;

(x) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(xi) benefits under section 336 of the Older Americans Act;

(xii) any annuity or other benefit under the Railroad Retirement Act of 1974;

(xiii) benefits under the National School Lunch Act;

(xiv) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(xv) benefits under the Low-Income Home Energy Assistance Act of 1981; and

(xvi) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976,

which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family.

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§3902. Interest penalties

(a) Under regulations prescribed under section 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due. The interest shall be computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty.

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§6503. Intergovernmental financing

(a) Consistent with program purposes and with regulations of the Secretary, and in accordance with an agreement under subsection (b) entered into by the Secretary and a State—

(1) the head of an executive agency (other than the Tennessee Valley Authority) carrying out a program shall schedule transfers of funds to the State under the program so as to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State; and

(2) the State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

(b)(1) The Secretary shall enter into an agreeement with each State to which transfers of funds are made, which establishes procedures and requirements for implementing this section.

(2) An agreement under this subsection shall—

(A) specify procedures chosen by the State for carrying out transfers of funds under the agreement;

(B) describe the process by which the Federal Government shall review and approve the implementation of the procedures specified under subparagraph (A);

(C) establish the methods to be used for calculating and documenting payments of interest pursuant to this section; and

(D) specify those types of costs directly incurred by the State for interest calculations required under this section, and require the Secretary to consider those costs in computing payments under this section.

(3) The Secretary shall issue regulations establishing procedures and requirements for implementing this section with respect to a State with which no agreement is entered into by the Secretary under paragraph (1). Such regulations shall apply to a State until such time as the Secretary enters into an agreement with the State under paragraph (1).

(c)(1) The Secretary shall issue regulations that shall require a State, when not inconsistent with program purposes, to pay interest to the United States on funds from the time funds are deposited by the United States to the State's account until the time that funds are paid out by the State in order to redeem checks or warrants or make payments by other means for program purposes. Except as provided under paragraph

(3)(B) (relating to the Unemployment Trust Fund), the interest payable under this subsection shall be calculated at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) Except as provided in paragraph (3), amounts received by the United States as payment of interest under this subsection shall be deposited in the Treasury and credited as miscellaneous receipts.

(3)(A) Amounts paid by a State under paragraph (1) as interest on funds paid to a State from a trust fund for which the Secretary is the trustee shall be credited to such trust fund.

(B) Notwithstanding any other provision of this section, amounts of interest paid by a State, on funds drawn from its account in the Unemployment Trust Fund, shall be deposited into that account and shall consist of actual interest earnings by the State, less related banking costs incurred by the State, for the period for which interest is calculated.

(d)(1) If a State disburses its own funds for program purposes in accordance with Federal law, Federal regulation, or Federal-State agreement, the State shall be entitled to interest from the time the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) If interest is paid under this subsection as a result of a State disbursing its own funds before receiving payment from a trust fund for which the Secretary of the Treasury is the trustee, such interest shall be charged against such trust fund.

(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest accrued to the Federal Government under subsection (c) and amounts of interest paid to States under subsection (d).

(f) If a State receives refunds of funds disbursed by the State under a Federal program, the State shall return those refunds to the Federal executive agency administering the program or apply those refunds to reduce the amount of funds owed by the Federal Government to the State under such program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

(g) If the Federal Government makes a payment to a recipient under a Federal program, and a portion of the payment is an amount which the Federal Government is paying to such recipient on behalf of a State, such amount shall be considered to be a transfer of funds between the Federal Government and the State for purposes of this section.

(h) A State may not be required by a law or regulation of the United States to deposit funds received by it in a separate bank account. However, a State shall account for funds made available to the State as United States Government funds in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the funds, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the funds received by the State shall be made available to the head of the executive agency, the Inspector General of the executive agency, and the Comptroller General for necessary audits.

(i) The Secretary shall prescribe methods for the payment of interest under this section between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall require payment of interest on an annual basis and shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

(j) Consistent with Federal program purposes and regulations of the Director of the Office of Management and Budget, the head of a Federal executive agency carrying out a program shall execute grant awards to States on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.[8]

§6504. Use of existing State or multimember agency to administer grant programs

Notwithstanding a law of the United States providing that one State agency or multimember agency must be established or designated to carry out or supervise the administration of a grant program, the head of the executive agency carrying out the program may, when requested by the executive or legislative authority of the State responsible for the organizational structure of a State government—

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[8] P.L. 101-453, §5(b), amended §6503 in its entirety.

(1) waive the one State agency or multimember agency provision on an adequate showing that the provision prevents the establishment of the most effective and efficient organizational arrangement within the State government; and

(2) approve another State administrative structure or arrangement after deciding that the objectives of the law authorizing the grant program will not be endangered by using another State structure or arrangement.

§6505. Authority to provide specialized or technical services

(a) The President may prescribe statistical and other studies and compilations, development projects, technical tests and evaluations, technical information, training activities, surveys, reports, documents, and other similar services that an executive agency is especially competent and authorized by law to provide. The services prescribed must be consistent with and further the policy of the United States Government of relying on the private enterprise system to provide services reasonably and quickly available through ordinary business channels.

(b) The head of an executive agency may provide services prescribed by the President under this section to a State or local government when—

(1) written request is made by the State or local government; and

(2) payment of pay and all other identifiable costs of providing the services is made to the executive agency by the State or local government making the request.

(c) Payment received by an executive agency for providing services under this section shall be deposited to the credit of the principal appropriation from which the cost of providing the services has been paid or will be charged.

(d) The authority under this section is in addition to authority under another law in effect on October 16, 1968.

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§7501. Definitions

As used in this chapter, the term—

(1) "cognizant agency" means a Federal agency which is assigned by the Director with the responsibility for implementing the requirements of this chapter with respect to a particular State or local government.

(2) "Comptroller General" means the Comptroller General of the United States.

(3) "Director" means the Director of the Office of Management and Budget.

(4) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals.

(5) "Federal agency" has the same meaning as the term "agency" in section 551(1) of title 5, United States Code.

(6) "generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(7) "generally accepted government auditing standards" means the standards for audit of governmental organizations, programs, activities, and functions, issued by the Comptroller General.

(8) "independent auditor" means—

(A) an external State or local government auditor who meets the independence standards included in generally accepted government auditing standards, or

(B) a public accountant who meets such independence standards.

(9) "internal controls" means the plan of organization and methods and procedures adopted by management to ensure that—

(A) resource use is consistent with laws, regulations, and policies;

(B) resources are safeguarded against waste, loss, and misuse; and

(C) reliable data are obtained, maintained, and fairly disclosed in reports.

(10) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) "local government" means any unit of local government within a State, including a county, borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(12) "major Federal assistance program" means any program for which total expenditures of Federal financial assistance by the State or local government during the applicable year exceed—

(A) $20,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $7,000,000,000;

(B) $19,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $6,000,000,000 but are less than or equal to $7,000,000,000;

(C) $16,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $5,000,000,000 but are less than or equal to $6,000,000,000;

(D) $13,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $4,000,000,000 but are less than or equal to $5,000,000,000;

(E) $10,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $3,000,000,000 but are less than or equal to $4,000,000,000;

(F) $7,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $2,000,000,000 but are less than or equal to $3,000,000,000;

(G) $4,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $1,000,000,000 but are less than or equal to $2,000,000,000;

(H) $3,000,000 in the case of a State or local government for which such total expenditures for all programs exceed $100,000,000 but are less than or equal to $1,000,000,000; and

(I) the larger of (i) $300,000, or (ii) 3 percent of such total expenditures for all programs, in the case of a State or local government for which such total expenditures for all programs exceed $100,000 but are less than or equal to $100,000,000.

(13) "public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(14) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, any multi-State, regional, or interstate entity which has governmental functions, and any Indian tribe.

(15) "subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that receives such assistance.

§7502. Audit requirements; exemptions

(a)(1)(A) Each State and local government which receives a total amount of Federal financial assistance equal to or in excess of $100,000 in any fiscal year of such government shall have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title.

(B) Each State and local government that receives a total amount of Federal financial assistance which is equal to or in excess of $25,000 but less than $100,000 in any fiscal year of such government shall—

(i) have an audit made for such fiscal year in accordance with the requirements of this chapter and the requirements of the regulations prescribed pursuant to section 7505 of this title; or

(ii) comply with any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

(C) Each State and local government that receives a total amount of Federal financial assistance which is less than $25,000 in any fiscal year of such government shall be exempt for such fiscal year from compliance with—

(i) the audit requirements of this chapter; and

(ii) any applicable requirements concerning financial or financial and compliance audits contained in Federal statutes and regulations governing programs under which such Federal financial assistance is provided to that government.

The provisions of clause (ii) of this subparagraph do not exempt a State or local government from compliance with any provision of a Federal statute or regulation that requires such government to maintain records concerning Federal financial assistance provided to such government or that permits a Federal agency or the Comptroller General access to such records.

(2) For purposes of this section, a State or local government shall be considered to receive Federal financial assistance whether such assistance is received directly from a Federal agency or indirectly through another State or local government.

(b)(1) Except as provided in paragraphs (2) and (3), audits conducted pursuant to this chapter shall be conducted annually.

(2) If a State or local government is required—

(A) by constitution or statute, as in effect on the date of enactment of this chapter, or

(B) by administrative rules, regulations, guidelines, standards, or policies, as in effect on such date,

to conduct its audits less frequently than annually, the cognizant agency for such government shall, upon request of such government, permit the government to conduct its audits pursuant to this chapter biennially, except as provided in paragraph (3). Such audits shall cover both years within the biennial period.

(3) Any State or local government that is permitted, under clause (B) of paragraph (2), to conduct its audits pursuant to this chapter biennially by reason of the requirements of a rule, regulation, guideline, standard, or policy, shall, for any of its fiscal years beginning after December 31, 1986, conduct such audits annually unless such State or local government codifies a requirement for biennial audits in its constitution or statutes by January 1, 1987. Audits conducted biennially under the provisions of this paragraph shall cover both years within the biennial period.

(c) Each audit conducted pursuant to subsection (a) shall be conducted by an independent auditor in accordance with generally accepted government auditing standards, except that, for the purposes of this chapter, such standards shall not be construed to require economy and efficiency audits, program results audits, or program evaluations.

(d)(1) Each audit conducted pursuant to subsection (a) for any fiscal year shall cover the entire State or local government's operations except that, at the option of such government—

(A) such audit may, except as provided in paragraph (5), cover only each department, agency, or establishment which received, expended, or otherwise administered Federal financial assistance during such fiscal year; and

(B) such audit may exclude public hospitals and public colleges and universities.

(2) Each such audit shall encompass the entirety of the financial operations of such government or of such department, agency, or establishment, whichever is applicable, and shall determine and report whether—

(A)(i) the financial statements of the government, department, agency, or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles; and

(ii) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon the financial statements;

(B) the government, department, agency, or establishment has internal control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(C) the government, department, agency, or establishment has complied with laws and regulations that may have a material effect upon each major Federal assistance program.

In complying with the requirements of subparagraph (C), the independent auditor shall select and test a representative number of transactions from each major Federal assistance program.

(3) Transactions selected from Federal assistance programs, other than major Federal assistance programs, pursuant to the requirements of paragraphs (2)(A) and (2)(B) shall be tested for compliance with Federal laws and regulations that apply to such transactions. Any noncompliance found in such transactions by the independent auditor in making determinations required by this paragraph shall be reported.

(4) The number of transactions selected and tested under paragraphs (2) and (3), the selection and testing of such transactions, and the determinations required by such paragraphs shall be based on the professional judgment of the independent auditor.

(5) Each State or local government which, in any fiscal year of such government, receives directly from the Department of the Treasury a total of $25,000 or more under chapter 67 of this title (relating to general revenue sharing) and which is required to conduct an audit pursuant to this chapter for such fiscal year shall not have the option provided by paragraph (1)(A) for such fiscal year.

(6) A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered to be an audit for the purpose of this chapter.

(e)(1) Each State and local government subject to the audit requirements of this chapter, which receives Federal financial assistance and provides $25,000 or more of such assistance in any fiscal year to a subrecipient, shall—

(A) if the subrecipient conducts an audit in accordance with the requirements of this chapter, review such audit and ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government; or

(B) if the subrecipient does not conduct an audit in accordance with the requirements of this chapter—

(i) determine whether the expenditures of Federal financial assistance provided to the subrecipient by the State or local government are in accordance with applicable laws and regulations; and

(ii) ensure that prompt and appropriate corrective action is taken on instances of material noncompliance with applicable laws and regulations with respect to Federal financial assistance provided to the subrecipient by the State or local government.

(2) Each such State and local government shall require each subrecipient of Federal assistance through such government to permit, as a condition of receiving funds from such assistance, the independent auditor of the State or local government to have such access to the subrecipient's records and financial statements as may be necessary for the State or local government to comply with this chapter.

(f) The report made on any audit conducted pursuant to this section shall, within thirty days after completion of such report, be transmitted to the appropriate Federal officials and made available by the State or local government for public inspection.

(g) If an audit conducted pursuant to this section finds any material noncompliance with applicable laws and regulations by, or material weakness in the internal controls of, the State or local government with respect to the matters described in subsection (d)(2), the State or local government shall submit to appropriate Federal officials a plan for corrective action to eliminate such material noncompliance or weakness or a statement describing the reasons that corrective action is not necessary. Such plan shall be consistent with the audit resolution standard promulgated by the Comptroller General (as part of the standards for internal controls in the Federal Government) pursuant to section 3512(b) of this title.

§7503. Relation to other audit requirements

(a) An audit conducted in accordance with this chapter shall be in lieu of any financial or financial and compliance audit of an individual Federal assistance program which a State or local government is required to conduct under any other Federal law or regulation. To the extend[9] that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal law or regulation, a Federal agency shall rely upon and use that information and plan and conduct its own audits accordingly in order to avoid a duplication of effort.

(b) Notwithstanding subsection (a), a Federal agency shall conduct any additional audits which are necessary to carry out its responsibilities under Federal law or regulation. The provisions of this chapter do not authorize any State or local government (or subrecipient thereof) to constrain, in any manner, such agency from carrying out such additional audits.

(c) The provisions of this chapter do not limit the authority of Federal agencies to conduct, or enter into contracts for the conduct of, audits and evaluations of Federal financial assistance programs, nor limit the authority of any Federal agency Inspector General or other Federal audit official.

(d) Subsection (a) shall apply to a State or local government which conducts an audit in accordance with this chapter even though it is not required by section 7502(a) to conduct such audit.

(e) A Federal agency that performs or contracts for audits in addition to the audits conducted by recipients pursuant to this chapter shall, consistent with other applicable law, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§7504. Cognizant agency responsibilities

(a) The Director shall designate cognizant agencies for audits conducted pursuant to this chapter.

(b) A cognizant agency shall—

(1) ensure that audits are made in a timely manner and in accordance with the requirements of this chapter;

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[9] As in original. Possibly should be "extent".

(2) ensure that the audit reports and corrective action plans made pursuant to section 7502 of this title are transmitted to the appropriate Federal officials; and

(3)(A) coordinate, to the extent practicable, audits done by or under contract with Federal agencies that are in addition to the audits conducted pursuant to this chapter; and (B) ensure that such additional audits build upon the audits conducted pursuant to this chapter.

§7505. Regulations

(a) The Director, after consultation with the Comptroller General and appropriate Federal, State, and local government officials, shall prescribe policies, procedures, and guidelines to implement this chapter. Each Federal agency shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such policies, procedures, and guidelines.

(b)(1) The policies, procedures, and guidelines prescribed pursuant to subsection (a) shall include criteria for determining the appropriate charges to programs of Federal financial assistance for the cost of audits. Such criteria shall prohibit a State or local government which is required to conduct an audit pursuant to this chapter from charging to any such program (A) the cost of any financial or financial and compliance audit which is not conducted in accordance with this chapter, and (B) more than a reasonably proportionate share of the cost of any such audit that is conducted in accordance with this chapter.

(2) The criteria prescribed pursuant to paragraph (1) shall not, in the absence of documentation demonstrating a higher actual cost, permit (A) the ratio of (i) the total charges by a government to Federal financial assistance programs for the cost of audits performed pursuant to this chapter, to (ii) the total cost of such audits, to exceed (B) the ratio of (i) total Federal financial assistance expended by such government during the applicable fiscal year or years, to (ii) such government's total expenditures during such fiscal year or years.

(c) Such policies, procedures, and guidelines shall include such provisions as may be necessary to ensure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals will have the opportunity to participate in the performance of contracts awarded to fulfill the audit requirements of this chapter.

§7506. Monitoring responsibilities of the Comptroller General

The Comptroller General shall review provisions requiring financial or financial and compliance audits of recipients of Federal assistance that are contained in bills and resolutions reported by the committees of the Senate and the House of Representatives. If the Comptroller General determines that a bill or resolution contains provisions that are inconsistent with the requirements of this chapter, the Comptroller General shall, at the earliest practicable date, notify in writing—

(1) the committee that reported such bill or resolution; and

(2)(A) the Committee on Governmental Affairs of the Senate (in the case of a bill or resolution reported by a committee of the Senate); or

(B) the Committee on Government Operations of the House of Representatives (in the case of a bill or resolution reported by a committee of the House of Representatives).

§7507. Effective date; report

(a) This chapter shall apply to any State or local government with respect to any of its fiscal years which begin after December 31, 1984.

(b) The Director, on or before May 1, 1987, and annually thereafter, shall submit to each House of Congress a report on operations under this chapter. Each such report shall specifically identify each Federal agency or State or local government which is failing to comply with this chapter.

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§9309. Priority of sureties

When a person required to provide a surety bond given to the United States Government is insolvent or dies having assets insufficient to pay debts, the surety, or the executor, administrator, or assignee of the surety paying the Government the amount due under the bond—

(1) has the same priority to amounts from the assets and estate of the person as are secured for the Government; and

(2) personally may bring a civil action under the bond to recover amounts paid under the bond.

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§9701. Fees and charges for Government services and things of value

(a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

(b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be—

(1) fair; and

(2) based on—

(A) the costs to the Government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.

(c) This section does not affect a law of the United States—

(1) prohibiting the determination and collection of charges and the disposition of those charges; and

(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases.

§9702. Investment of trust funds

Except as required by a treaty of the United States, amounts held in trust by the United States Government (including annual interest earned on the amounts)—

(1) shall be invested in Government obligations; and

(2) shall earn interest at an annual rate of at least 5 percent.

[*Internal References.*—S.S. Act §§201(d), 482(f), 503(a), 506(d), 904(b), 1816(c), 1817(c), 1841(c), 1892(c), 2002(b), and 2006(d) cite title 31, U.S. Code; and the catchlines for S.S. Act titles I, II, IV, VII, IX, X, XIV, XVI (State), XVI (SSI), XVIII, XIX, XX and §§1612(b) and 1613(a) and §§202(t), 402(a), 454(6) and (14), 1816(h), and 1902(a) have footnotes referring to title 31, U.S. Code.]

TITLE 32, UNITED STATES CODE

NATIONAL GUARD

* * * * * * *

§709. Technicians: employment, use, status

(a) Under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, and subject to subsection (b) of this section persons may be employed as technicians in—

(1) the administration and training of the National Guard; and

(2) the maintenance and repair of supplies issued to the National Guard or the armed forces.

(b) Except as prescribed by the Secretary concerned, a technician employed under subsection (a) shall, while so employed, be a member of the National Guard and hold the military grade specified by the Secretary concerned for that position.

(c) The Secretary concerned shall designate the adjutants general referred to in section 314 of this title, to employ and administer the technicians authorized by this section.

(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States. However, a position authorized by this section is outside the competitive service if the technician employed therein is required under subsection (b) to be a member of the National Guard.

(e) Notwithstanding any other provision of law and under regulations prescribed by the Secretary concerned—

(1) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who is separated from the National Guard or ceases to hold the military grade specified for his position by the Secretary concerned shall be promptly separated from his technician employment by the adjutant general of the jurisdiction concerned;

(2) a technician who is employed in a position in which National Guard membership is required as a condition of employment and who fails to meet the military security standards established by the Secretary concerned for a member of a reserve component of the armed force under his jurisdiction may be separated from his employment as a technician and concurrently discharged from the National Guard by the adjutant general of the jurisdiction concerned;

(3) a technician may, at any time, be separated from his technician employment for cause by the adjutant general of the jurisdiction concerned;

(4) a reduction in force, removal, or an adverse action involving discharge from technician employment, suspension, furlough without pay, or reduction in rank or compensation shall be accomplished by the adjutant general of the jurisdiction concerned;

(5) a right of appeal which may exist with respect to clause (1), (2), (3), or (4) shall not extend beyond the adjutant general of the jurisdiction concerned; and

(6) a technician shall be notified in writing of the termination of his employment as a technician and such notification shall be given at least thirty days prior to the termination date of such employment.

(f) Sections 2108, 3502, 7511, and 7512 of title 5 do not apply to any person employed under this section.

(g)(1) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10 of the General Schedule under section 5332 of title 5.

(2) Notwithstanding sections 5544(a) and 6101(a) of title 5 or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5 or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

(h) In no event shall the number of technicians employed under this section at any one time exceed 53,100.

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[*Internal Reference*—S.S. Act §218(b) cites title 32, U.S. Code.]

TITLE 37, UNITED STATES CODE

PAY AND ALLOWANCES OF THE UNIFORMED SERVICES

§101. Definitions

In addition to the definitions in sections 1-5 of title 1, the following definitions apply in this title:

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(3) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service.

* * * * * * *

(5) The term "Secretary concerned" means—

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard when it is not operating as a service in the Navy;

(E) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration; and

(F) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.

* * * * * * *

§206. Reserves; members of National Guard: inactive-duty training

(a) Under regulations prescribed by the Secretary concerned, and to the extent provided for by appropriations, a member of the National Guard or a member of a reserve component of a uniformed service who is not entitled to basic pay under section 204 of this title, is entitled to compensation, at the rate of 1/30 of the basic pay authorized for a member of a uniformed service of a corresponding grade entitled to basic pay—

(1) for each regular period of instruction, or period of appropriate duty, at which the member is engaged for at least two hours, including that performed on a Sunday or holiday;

(2) for the performance of such other equivalent training, instruction, duty, or appropriate duties, as the Secretary may prescribe; or

(3) for a regular period of instruction that the member is scheduled to perform but is unable to perform because of physical disability resulting from an injury, illness, or disease incurred or aggravated—

(A) in line of duty while performing—

(i) active duty; or

(ii) inactive-duty training; or

(B) while traveling directly to or from that duty or training (unless such injury, illness, disease, or aggravation of an injury, illness, or disease is the result of the gross negligence or misconduct of the member).

* * * * * * *

§1009. Adjustments of compensation

(a) Whenever the General Schedule of compensation for Federal classified employees as contained in section 5332 of title 5 is adjusted upward, the President shall immediately make an upward adjustment in the—

(1) monthly basic pay authorized members of the uniformed services by section 203(a) of this title;

(2) basic allowance for subsistence authorized enlisted members and officers by section 402 of this title; and

(3) basic allowance for quarters authorized members of the uniformed services by section 403(a) of this title.

(b) An adjustment under this section shall have the force and effect of law and shall—

(1) carry the same effective date as that applying to the compensation adjustments provided General Schedule employees;

(2) be based on the rates of the various elements of compensation as defined in, or made under, section 402 or 403 of this title or this section; and

(3) subject to subsections (c) and (d) of this section, provide all eligible members with an increase in each element of compensation, set forth in subsection (a) of this section, which is of the same percentage as the overall average percentage increase in the General Schedule rates of basic pay for civilian employees.

(c)(1) Whenever the President determines such action to be in the best interest of the Government, he is authorized to allocate the overall average percentage of any increase described in subsection (b)(3) of this section among the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis; however, the amount allocated to the element of monthly basic pay may not be less than 75 percent of the amount that would have been allocated to the element of basic pay under subsection (b)(3) of this section.

(2) Under regulations prescribed by the President, whenever the President exercises his authority under paragraph (1) of this subsection to allocate the elements of compensation specified in subsection (a) of this section on a percentage basis other than an equal percentage basis, he may pay to each member without dependents who, under section 403(b) or (c) of this title, is not entitled to receive a basic allowance for quarters, an amount equal to the difference between (1) the amount of such increase under paragraph (1) of this subsection in the amount of the basic allowance for

quarters which, but for section 403(b) or (c) of this title, such member would be entitled to receive, and (2) the amount by which such basic allowance for quarters would have been increased under subsection (b)(3) of this section if the President had not exercised such authority.

(d)(1) Subject to paragraph (2) of this subsection, whenever the President determines such action to be in the best interest of the Government, he may allocate the overall percentage increase in the element of basic pay that would otherwise be effective after any allocation made under subsection (c) of this section among such pay grade and years-of-service categories as he considers appropriate.

(2) In making any allocation of an overall percentage increase in basic pay under paragraph (1) of this subsection—

(A) the amount of the increase in basic pay for any given pay grade and years-of-service category after any allocation made under this subsection or under subsection (c) of this section (or under both such subsections) may not be less than 75 percent of the amount of the increase in the element of basic pay that would otherwise have been effective with respect to such pay grade and years-of-service category under subsection (b)(3) of this section; and

(B) the overall percentage increase in the elements of compensation specified in subsection (a) of this section in the case of any member of the uniformed services with four years or less service may not exceed the overall percentage increase in the General Schedule rates of basic pay for civilian employees.

(e) Whenever the President plans to exercise his authority under subsection (c) or (d) of this section with respect to any anticipated increase in the compensation of members of the uniformed services, he shall advise the Congress, at the earliest practicable time prior to the effective date of such increase, regarding the proposed allocation of such increase.

(f) The allocations of increases made under this section shall be assessed in conjunction with the quadrennial review of military compensation required by section 1008(b) of this title, and a full report shall be made to the Congress summarizing the objectives and results of those allocations.

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[*Internal References.*—S.S. Act §§209(d) and 465(a) and (c) cite title 37, U.S. Code.]

TITLE 38—UNITED STATES CODE[1]

VETERANS' BENEFITS

§101. Definitions

For the purposes of this title—

* * * * * * *

(21) The term "active duty" means—

(A) full-time duty in the Armed Forces, other than active duty for training;

(B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;

(C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (a) while on transfer to one of the Armed Forces, or (b) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (c) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;

(D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and

(E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means—

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[1] This title was enacted by P.L. 85-857, approved September 2, 1958; 72 Stat. 1105. See P.L. 95-202, §401 (this volume), with respect to Women's Air Forces Service Pilots.

(A) full-time duty in the Armed Forces performed by Reserves for training purposes;

(B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;

(C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;

(D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and

(E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means—

(A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;

(B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

* * * * * * *

(27) The term "reserve component" means, with respect to the Armed Forces—

(A) the Army Reserve;
(B) the Naval Reserve;
(C) the Marine Corps Reserve;
(D) the Air Force Reserve;
(E) the Coast Guard Reserve;
(F) the Army National Guard of the United States; and
(G) the Air National Guard of the United States.

* * * * * * *

§603. Contracts for hospital care and medical services in non-Veterans' Administration facilities

(a) When Veterans' Administration facilities are not capable of furnishing economical hospital care or medical services because of geographical inaccessibility or are not capable of furnishing the care or services required, the Administrator, as authorized in section 610 or 612 of this title, may contract with non-Veterans' Administration facilities in order to furnish any of the following:

(1) Hospital care or medical services to a veteran for the treatment of—

(A) a service-connected disability; or

(B) a disability for which a veteran was discharged or released from the active military, naval, or air service.

(2) Medical services for the treatment of any disability of—

(A) a veteran described in section 612(a)(1)(B) of this title;

(B) a veteran described in section[2] paragraph (2), (3), or (4) of section 612(a) of this title, for a purpose described in section 612(a)(5)(B) of this title; or

(C) a veteran described in section 612(a)(3) (other than a veteran who is a former prisoner of war) of this title if the Administrator has determined, based on an examination by a physician employed by the Veterans' Administration (or, in areas where no such physician is available, by a physician carrying out such function under a contract or fee arrangement), that the medical condition of such veteran precludes appropriate treatment in Veterans' Administration facilities.

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[2] As in original; "section" should be deleted.

(3) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving medical services in a Veterans' Administration facility or nursing home care under section 620 of this title until such time following the furnishing of care in the non-Veterans' Administration facility as the veteran can be safely transferred to a Veterans' Administration facility.

(4) Hospital care for women veterans.

(5) Hospital care, or medical services that will obviate the need for hospital admission, for veterans in a State (other than the Commonwealth of Puerto Rico) not contiguous to the contiguous States, except that the annually determined hospital patient load and incidence of the furnishing of medical services to veterans hospitalized or treated at the expense of the Veterans' Administration in Government and non-Veterans' Administration facilities in each such noncontiguous State shall be consistent with the patient load or incidence of the furnishing of medical services for veterans hospitalized or treated by the Veterans' Administration within the 48 contiguous States and the Commonwealth of Puerto Rico.

(6) Diagnostic services necessary for determination of eligibility for, or of the appropriate course of treatment in connection with, furnishing medical services at independent Veterans' Administration out-patient[3] clinics to obviate the need for hospital admission.

(7) Outpatient dental services and treatment, and related dental appliances, for a veteran described in section 612(b)(1)(G) of this title.

(8) Diagnostic services (on an inpatient or outpatient basis) for observation or examination of a person to determine eligibility for a benefit or service under laws administered by the Veterans' Administration.

(b) In the case of any veteran for whom the Administrator contracts to furnish care or services in a non-Veterans' Administration facility pursuant to a provision of subsection (a) of this section, the Administrator shall periodically review the necessity for continuing such contractual arrangement pursuant to such provision.

(c) The Administrator shall include in the budget documents which the Administrator submits to Congress for any fiscal year a detailed report on the furnishing of contract care and services during the most recently completed fiscal year under this section, sections 612A, 620, 620A, 624, and 632 of this title, and section 115 of the Veterans' Benefits and Services Act of 1988.

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§613. Medical care for survivors and dependents of certain veterans

(a) The Administrator is authorized to provide medical care, in accordance with the provisions of subsection (b) of this section, for—

(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability,

(2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and

(3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct,

who are not otherwise eligible for medical care under chapter 55 of title 10 (CHAMPUS).

(b) In order to accomplish the purposes of subsection (a) of this section, the Administrator shall provide for medical care in the same or similar manner and subject to the same or similar limitations as medical care is furnished to certain dependents and survivors of active duty and retired members of the Armed Forces under chapter 55 of title 10 (CHAMPUS), by—

(1) entering into an agreement with the Secretary of Defense under which the Secretary shall include coverage for such medical care under the contract, or contracts, the Secretary enters into to carry out such chapter 55, and under which the Administrator shall fully reimburse the Secretary for all costs and expenditures made for the purposes of affording the medical care authorized pursuant to this section; or

(2) contracting in accordance with such regulations as the Administrator shall prescribe for such insurance, medical service, or health plans as the Administrator deems appropriate.

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[3] As in original.

In cases in which Veterans' Administration medical facilities are equipped to provide the care and treatment, the Administrator is also authorized to carry out such purposes through the use of such facilities not being utilized for the care of eligible veterans.

(c) For the purposes of this section, a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution approved under chapter 36 of this title, and (3) who, while pursuing such course of instruction, incurs a disabling illness or injury (including a disabling illness or injury incurred between terms, semesters, or quarters or during a vacation or holiday period) which is not the result of such child's own willful misconduct and which results in such child's inability to continue or resume such child's chosen program of education at an approved educational institution shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first.

(d) Notwithstanding the second sentence of section 1086(c) of title 10 or any other provision of law, any spouse, surviving spouse, or child who, after losing eligibility for medical care under this section by virtue of becoming entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), has exhausted any such benefits shall become eligible for medical care under this section and shall not thereafter lose such eligibility under this section by virtue of becoming again eligible for such hospital insurance benefits.

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CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

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§2001. Definitions

For the purposes of this chapter—

(1) The term "special disabled veteran" has the same meaning provided in section 2011(1) of this title.

(2) The term "veteran of the Vietnam era" has the same meaning provided in section 2011(2) of this title.

(3) The term "disabled veteran" has the same meaning provided in section 2011(3) of this title.

(4) The term "eligible veteran" has the same meaning provided in section 2011(4) of this title.

(5) The term "eligible person" means—

(A) the spouse of any person who died of a service-connected disability,

(B) the spouse of any member of the Armed Forces serving on active duty who, at the time of application for assistance under this chapter, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than ninety days: (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power, or

(C) the spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

(6) The term "State" means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, and may include, to the extent determined necessary and feasible, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(7) The term "local employment service office" means a service delivery point which has an intrinsic management structure and at which employment services are offered in accordance with the Wagner-Peyser Act.

(8) The term "Secretary" means the Secretary of Labor.

§2002. Purpose

The Congress declares as its intent and purpose that there shall be an effective (1) job and job training counseling service program, (2) employment placement service program, and (3) job training placement service program for eligible veterans and eligible persons and that, to this end policies and regulations shall be promulgated and administered by an Assistant Secretary of Labor for Veterans' Employment and

Training, established by section 2002A of this title, through a Veterans Employment and Training Service within the Department of Labor, so as to provide such veterans and persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era through existing programs, coordination and merger of programs and implementation of new programs.

§2002A. Assistant Secretary of Labor for Veterans' Employment and Training; Regional Administrators

(a) There is established within the Department of Labor an Assistant Secretary of Labor for Veterans' Employment and Training, appointed by the President by and with the advice and consent of the Senate, who shall be the principal advisor to the Secretary with respect to the formulation and implementation of all departmental policies and procedures to carry out (1) the purposes of this chapter, chapter 42, and chapter 43 of this title, and (2) all other Department of Labor employment, unemployment, and training programs to the extent they affect veterans. The employees of the Department of Labor administering chapter 43 of this title shall be administratively and functionally responsible to the Assistant Secretary of Labor for Veterans' Employment.

(b) The Secretary shall—[4]

(1) except as expressly provided otherwise, carry out all provisions of this chapter and chapter 43 of this title through the Assistant Secretary of Labor for Veterans' Employment and Training and administer through such Assistant Secretary all programs under the jurisdiction of the Secretary for the provision of employment and training services designed to meet the needs of disabled veterans, veterans of the Vietnam era, and all other eligible veterans and eligible persons;

(2) in order to make maximum use of available resources in meeting such needs, encourage all such programs and all grantees under such programs to enter into cooperative arrangements with private industry and business concerns (including small business concerns), educational institutions, trade associations, and labor unions;

(3) ensure that maximum effectiveness and efficiency are achieved in providing services and assistance to eligible veterans under all such programs by coordinating and consulting with the Secretary of Veterans Affairs[5] with respect to (A) programs conducted under other provisions of this title, with particular emphasis on coordination of such programs with readjustment counseling activities carried out under section 612A of this title, apprenticeship or other on-the-job training programs carried out under section 1787 of this title, and rehabilitation and training activities carried out under chapter 31 of this title, and (B) the Veterans' Job Training Act (29 U.S.C. 1721 note);

(4) ensure that job placement activities are carried out in coordination and cooperation with appropriate State public employment service officials;

(5) subject to subsection (c)(2) of this section, make available for use in each State, directly or by grant or contract, such funds as may be necessary (A) to support (i) disabled veterans' outreach program specialists appointed under section 2003A(a)(1) of this title, and (ii) local veterans' employment representatives assigned under section 2004(b) of this title, and (B) to support the reasonable expenses of such specialists and representatives for training, travel, supplies, and fringe benefits, including travel expenses and per diem for attendance at the National Veterans' Employment and Training Services Institute established under section 2009 of this title;

(6) monitor and supervise on a continuing basis the distribution and use of funds provided for use in the States under paragraph (5) of this subsection; and

(7) monitor the appointment of disabled veterans' outreach specialists and the assignment of local veterans' employment representatives in order to ensure compliance with the provisions of sections 2003A(a)(1) and 2004(a)(4), respectively, of this title.

(c)(1) The distribution and use of funds under subsection (b)(5) of this section in order to carry out sections 2003A(a) and 2004(a) of this title shall be subject to the continuing supervision and monitoring of the Secretary and shall not be governed by the provisions of any other law, or any regulations prescribed thereunder, that are inconsistent with this section or section 2003A or 2004 of this title.

(2) In determining the terms and conditions of a grant or contract under which funds are made available in a State in order to carry out section 2003A or 2004 of this title, the Secretary shall take into account (A) the results of the evaluations, carried out pursuant to section 2003(c)(15) of this title, of the performance of local employment offices in the State, and (B) the monitoring carried out under this section.

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[4] Alignment as in original.

[5] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

(3) Each grant or contract by which funds are made available in a State shall contain a provision requiring the recipient of the funds to comply with the provisions of this chapter.

(d) The Assistant Secretary of Labor for Veterans' Employment and Training shall promote and monitor participation of qualified veterans and eligible persons in employment and training opportunities under the Job Training Partnership Act and other federally funded employment and training programs.

(e)(1) The Secretary shall assign to each region for which the Secretary operates a regional office a representative of the Veterans' Employment and Training Service to serve as the Regional Administrator for Veterans' Employment and Training in such region.

(2) Each such Regional Administrator shall be responsible for—

(A) ensuring the promotion, operation, and implementation of all veterans' employment and training programs and services within the region;

(B) monitoring compliance with section 2012 of this title with respect to veterans' employment under Federal contracts within the region;

(C) protecting and advancing veterans' reemployment rights within the region; and

(D) coordinating, monitoring, and providing technical assistance on veterans' employment and training programs with respect to all entities receiving funds under grants from or contracts with the Department of Labor within the region.

§2003. Directors and Assistant Directors for Veterans' Employment and Training

(a) The Secretary shall assign to each State a representative of the Veterans' Employment Service to serve as the Director for Veterans' Employment and Training, and shall assign full-time Federal clerical support to each such Director. The Secretary shall also assign to each State one Assistant Director for Veterans' Employment and Training per each 250,000 veterans and eligible persons of the State veterans population and such additional Assistant Directors for Veterans' Employment and Training as the Secretary shall determine, based on the data collected pursuant to section 2007 of this title, to be necessary to assist the Director for Veterans' Employment and Training to carry out effectively in that State the purposes of this chapter. Full-time Federal clerical support personnel assigned to Directors for Veterans' Employment and Training shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(b)(1)(A) Each Director for Veterans' Employment and Training and Assistant Director for Veterans' Employment and Training (i) shall, except as provided in subparagraph (B) of this paragraph, be a qualified veteran who at the time of appointment has been a bona fide resident of the State for at least two years, and (ii) shall be appointed in accordance with the provisions of title 5 governing appointments in the competitive service and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5.

(B) If, in appointing a Director or Assistant Director for any State under this section, the Secretary determines that there is no qualified veteran available who meets the residency requirement in subparagraph (A)(i), the Secretary may appoint as such Director or Assistant Director any qualified veteran.

(2) Each Director for Veterans' Employment and Training and Assistant Director for Veterans' Employment and Training shall be attached to the public employment service system of the State to which they are assigned. They shall be administratively responsible to the Secretary for the execution of the veterans' and eligible persons' counseling and placement policies of the Secretary through the public employment service system and in cooperation with other employment and training programs administered by the Secretary, by grantees of Federal or federally funded employment and training programs in the State, or directly by the State.

(c) In cooperation with the staff of the public employment service system and the staffs of each such other program in the State, the Director for Veterans' Employment and Training and Assistant Directors for Veterans' Employment and Training shall—

(1)(A) functionally supervise the provision of services to eligible veterans and eligible persons by such system and such program and their staffs, and (B) be functionally responsible for the supervision of the registration of eligible veterans and eligible persons in local employment offices for suitable types of employment and training and for counseling and placement of eligible veterans and eligible persons in employment and job training programs, including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note);

(2) engage in job development and job advancement activities for eligible veterans and eligible persons, including maximum coordination with appropriate officials of the Department of Veterans Affairs[6] in that agency's carrying out of its responsibilities under subchapter IV of chapter 3 of this title and in the conduct of job fairs, job marts, and other special programs to match eligible veterans and eligible persons with appropriate job and job training opportunities and otherwise to promote the employment of eligible veterans and eligible persons;

(3) assist in securing and maintaining current information as to the various types of available employment and training opportunities, including maximum use of electronic data processing and telecommunications systems and the matching of an eligible veteran's or an eligible person's particular qualifications with an available job or on-job training or apprenticeship opportunity which is commensurate with those qualifications;

(4) promote the interest of employers and labor unions in employing eligible veterans and eligible persons and in conducting on-job training and apprenticeship programs for such veterans and persons;

(5) maintain regular contact with employers, labor unions, training programs and veterans' organizations with a view to keeping them advised of eligible veterans and eligible persons available for employment and training and to keeping eligible veterans and eligible persons advised of opportunities for employment and training;

(6) promote and facilitate the participation of veterans in Federal and federally funded employment and training programs and directly monitor the implementation and operation of such programs to ensure that eligible veterans, veterans of the Vietnam era, disabled veterans, and eligible persons receive such priority or other special consideration in the provision of services as is required by law or regulation;

(7) assist in every possible way in improving working conditions and the advancement of employment of eligible veterans and eligible persons;

(8) supervise the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

(9) be responsible for ensuring that complaints of discrimination filed under such section are resolved in a timely fashion;

(10) working closely with appropriate Department of Veterans Affairs[7] personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, cooperate with employers to identify disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

(11) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need employment placement assistance or vocational training assistance;

(12) when requested by a Federal or State agency or a private employer, assist such agency or employer in identifying and acquiring prosthetic and sensory aids and devices which tend to enhance the employability of disabled veterans;

(13) monitor the implementation of Federal laws requiring veterans preference in employment and job advancement opportunities within the Federal Government and report to the Office of Personnel Management or other appropriate agency, for enforcement or other remedial action, any evidence of failure to provide such preference or to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation;

(14) monitor, through disabled veterans' outreach program specialists and local veterans' employment representatives, the listing of vacant positions with State employment agencies by Federal agencies, and report to the Office of Personnel Management or other appropriate agency, for enforcement or other remedial action, any evidence of failure to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation; and

(15)(A) not less frequently than annually, conduct, subject to subclause (B) of this clause, an evaluation at each local employment office of the services provided to eligible veterans and eligible persons and make recommendations for corrective action as appropriate; and

(B) carry out such evaluations in the following order of priority: (I) offices that demonstrated less than satisfactory performance during either of the two previous program years, (II) offices with the largest number of veterans registered during the previous program year, and (III) other offices as resources permit.

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[6] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

[7] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

§2003A. Disabled veterans' outreach program

(a)(1) The amount of funds made available for use in a State under section 2002A(b)(5)(A)(i) of this title shall be sufficient to support the appointment of one disabled veterans' outreach program specialist for each 5,300 veterans of the Vietnam era and disabled veterans residing in such State. Each such specialist shall be a qualified veteran. Preference shall be given in the appointment of such specialists to qualified disabled veterans of the Vietnam era. If the Secretary finds that a qualified disabled veteran of the Vietnam era is not available for any such appointment, preference for such appointment shall be given to other qualified disabled veterans. If the Secretary finds that no qualified disabled veteran is available for such appointment, such appointment may be given to any qualified veteran. Each such specialist shall be compensated at a rate not less than the rate prescribed for an entry level professional in the State government of the State concerned.

(2) Specialists appointed pursuant to this subsection shall be in addition to and shall not supplant employees assigned to local employment service offices pursuant to section 2004 of this title.

(b)(1) Pursuant to regulations prescribed by the Secretary of Labor, disabled veterans' outreach program specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with priority for the provision of services in the following order:

(A) Services to disabled veterans of the Vietnam era who are participating in or have completed a program of vocational rehabilitation under chapter 31 of this title.

(B) Services to other disabled veterans.

(C) Services to other eligible veterans in accordance with priorities determined by the Secretary taking into account applicable rates of unemployment and the employment emphases set forth in chapter 42 of this title.

In the provision of services in accordance with this paragraph, maximum emphasis in meeting the employment needs of veterans shall be placed on assisting economically or educationally disadvantaged veterans.

(2) Not more than three-fourths of the disabled veterans' outreach program specialists in each State shall be stationed at local employment service offices in such State. The Secretary, after consulting the Secretary of Veterans Affairs[8] and the Director for Veterans' Employment and Training assigned to a State under section 2003 of this title, may waive the limitation in the preceding sentence for that State so long as the percentage of all disabled veterans' outreach program specialists that are stationed at local employment service offices in all States does not exceed 80 percent. Specialists not so stationed shall be stationed at centers established by the Department of Veterans Affairs[9] to provide a program of readjustment counseling pursuant to section 612A of this title, veterans assistance offices established by the Department of Veterans Affairs[10] pursuant to section 242 of this title, and such other sites as may be determined to be appropriate in accordance with regulations prescribed by the Secretary after consultation with the Secretary of Veterans Affairs[11].

(c) Each disabled veterans' outreach program specialist shall carry out the following functions for the purpose of providing services to eligible veterans in accordance with the priorities set forth in subsection (b) of this section:

(1) Development of job and job training opportunities for such veterans through contacts with employers, especially small- and medium-size private sector employers.

(2) Pursuant to regulations prescribed by the Secretary after consultation with the Secretary of Veterans Affairs[12], promotion and development of apprenticeship and other on-job training positions pursuant to section 1787 of this title.

(3) The carrying out of outreach activities to locate such veterans through contacts with local veterans organizations, the Department of Veterans Affairs[13], the State employment service agency and local employment service offices, and community-based organizations.

(4) Provision of appropriate assistance to community-based groups and organizations and appropriate grantees under other Federal and federally funded employment and training programs (including part C of title IV of the Job Training Partnership Act (29 U.S.C. 1501 et seq.)) in providing services to such veterans.

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[8] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[9] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

[10] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

[11] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[12] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[13] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

(5) Provision of appropriate assistance to local employment service office employees with responsibility for veterans in carrying out their responsibilities pursuant to this chapter.

(6) Consultation and coordination with other appropriate representatives of Federal, State, and local programs (including the program conducted under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note)) for the purpose of developing maximum linkages to promote employment opportunities for and provide maximum employment assistance to such veterans.

(7) The carrying out of such other duties as will promote the development of entry-level and career job opportunities for such veterans.

(8) Development of outreach programs in cooperation with appropriate Department of Veterans Affairs[14] personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, with educational institutions, and with employers in order to ensure maximum assistance to disabled veterans who have completed or are participating in a vocational rehabilitation program under such chapter.

(9) Provision of vocational guidance or vocational counseling services, or both, to veterans with respect to veterans' selection of and changes in vocations and veterans' vocational adjustment.

(10) Provision of services as a case manager under section 14(b)(1)(A) of the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note).

§2004. Local veterans' employment representatives

(a)(1) Beginning with fiscal year 1988, the total of the amount of funds made available for use in the States under section 2002A(b)(5)(A)(ii) of this title shall be sufficient to support the assignment of 1,600 full-time local veterans' employment representatives and the States' administrative expenses associated with the assignment of that number of such representatives and shall be allocated to the several States so that each State receives funding sufficient to support—

(A) the number of such representatives who were assigned in such State on January 1, 1987, for which funds were provided under this chapter, plus one additional such representative;

(B) the percentage of the 1,600 such representatives for which funding is not provided under clause (A) of this paragraph which is equal to the average of (i) the percentage of all veterans residing in the United States who reside in such State, (ii) the percentage of the total of all eligible veterans and eligible persons registered for assistance with local employment service offices in the United States who are registered for assistance with local employment service offices in such State, and (iii) the percentage of all full-service local employment service offices in the United States which are located in such State; and

(C) the State's administrative expenses associated with the assignment of the number of such representatives for which funding is allocated to the State under clauses (A) and (B) of this paragraph.

(2)(A) The local veterans' employment representatives allocated to a State pursuant to paragraph (1) of this subsection shall be assigned by the administrative head of the employment service in the State, after consultation with the Director for Veterans' Employment and Training for the State, so that as nearly as practical (i) one full-time representative is assigned to each local employment service office at which at least 1,100 eligible veterans and eligible persons are registered for assistance, (ii) one additional full-time representative is assigned to each local employment service office for each 1,500 eligible veterans and eligible persons above 1,100 who are registered at such office for assistance, and (iii) one half-time representative is assigned to each local employment service office at which at least 350 but less than 1,100 eligible veterans and eligible persons are registered for assistance.

(B) In the case of a service delivery point (other than a local employment service office described in subparagraph (A) of this paragraph) at which employment services are offered under the Wagner-Peyser Act, the head of such service delivery point shall be responsible for ensuring compliance with the provisions of this title providing for priority services for veterans and priority referral of veterans to Federal contractors.

(3) For the purposes of this subsection, an individual shall be considered to be registered for assistance with a local employment service office during a program year if the individual—

(A) registered, or renewed such individual's registration, for assistance with the office during that program year; or

(B) so registered or renewed such individual's registration during a previous program year and, in accordance with regulations which the Secretary shall prescribe, is counted as still being registered for administrative purposes.

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[14] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

(4) In the assigning of local veterans' employment representatives on or after July 1, 1988, preference shall be given to qualified eligible veterans or eligible persons. Preference shall be accorded first to qualified service-connected disabled veterans; then, if no such disabled veteran is available, to qualified eligible veterans; and, if no such eligible veteran is available, then to qualified eligible persons.

(b) Local veterans' employment representatives shall—

(1) functionally supervise the providing of services to eligible veterans and eligible persons by the local employment service staff;

(2) maintain regular contact with community leaders, employers, labor unions, training programs, and veterans' organizations for the purpose of (A) keeping them advised of eligible veterans and eligible persons available for employment and training, and (B) keeping eligible veterans and eligible persons advised of opportunities for employment and training;

(3) provide directly, or facilitate the provision of, labor exchange services by local employment service staff to eligible veterans and eligible persons, including intake and assessment, counseling, testing, job-search assistance, and referral and placement;

(4) encourage employers and labor unions to employ eligible veterans and eligible persons and conduct on-the-job training and apprenticeship programs for such veterans and persons;

(5) promote and monitor the participation of veterans in federally funded employment and training programs, monitor the listing of vacant positions with State employment agencies by Federal agencies, and report to the Director for Veterans' Employment and Training for the State concerned any evidence of failure to provide priority or other special consideration in the provision of services to veterans as is required by law or regulation;

(6) monitor the listing of jobs and subsequent referrals of qualified veterans as required by section 2012 of this title;

(7) work closely with appropriate Department of Veterans Affairs[15] personnel engaged in providing counseling or rehabilitation services under chapter 31 of this title, and cooperate with employers in identifying disabled veterans who have completed or are participating in a vocational rehabilitation training program under such chapter and who are in need of employment;

(8) refer eligible veterans and eligible persons to training, supportive services, and educational opportunities, as appropriate;

(9) assist, through automated data processing, in securing and maintaining current information regarding available employment and training opportunities;

(10) cooperate with the staff of programs operated under section 612A of this title in identifying and assisting veterans who have readjustment problems and who may need services available at the local employment service office;

(11) when requested by a Federal or State agency, a private employer, or a service-connected disabled veteran, assist such agency, employer, or veteran in identifying and acquiring prosthetic and sensory aids and devices needed to enhance the employability of disabled veterans; and

(12) facilitate the provision of guidance or counseling services, or both, to veterans who, pursuant to section 5(b)(3) of the Veterans' Job Training Act (29 U.S.C. 1721 note), are certified as eligible for participation under such Act.

(c) Each local veterans' employment representative shall be administratively responsible to the manager of the local employment service office and shall provide reports, not less frequently than quarterly, to the manager of such office and to the Director for Veterans' Employment and Training for the State regarding compliance with Federal law and regulations with respect to special services and priorities for eligible veterans and eligible persons.

(d) Local veterans' employment representatives shall be assigned, in accordance with this section, by the administrative head of the employment service in each State after consultation with the Director for Veterans' Employment and Training.

§2004A. Performance of disabled veterans' outreach program specialists and local veterans' employment representatives

(a)(1) Subject to paragraph (2) of this subsection, each State employment agency shall develop and apply standards for the performance of disabled veterans' outreach program specialists appointed under section 2003A(a) of this title and local veterans' employment representatives assigned under section 2004(b) of this title.

(2)(A) Such standards shall be consistent with the duties and functions specified in section 2003A(b) of this title with respect to such specialists and section 2004(b)(1) through (12) of this title with respect to such representatives.

(B) In developing such standards, the State employment agency—

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[15] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

(i) shall take into account (I) the prototype developed under paragraph (3) of this subsection, and (II) the comments submitted under clause (ii) of this subparagraph by the Director for Veterans' Employment and Training for the State;

(ii) shall submit to such Director proposed standards for comment;

(iii) may take into account the State's personnel merit system requirements and other local circumstances and requirements; and

(iv) may request the assistance of such Director.

(C) Such standards shall include as one of the measures of the performance of such a specialist the extent to which the specialist, in serving as a case manager under section 14(b)(1)(A) of the Veterans' Job Training Act (29 U.S.C. 1721 note), facilitates rates of successful completion of training by veterans participating in programs of job training under the Act.

(3)(A) The Secretary, after consultation with State employment agencies or their representatives, or both, shall provide to such agencies a prototype of performance standards for use by such agencies in the development of performance standards under subsection (a)(1) of this section.

(B) Each Director for Veterans' Employment and Training—

(i) shall, upon the request of the State employment agency under paragraph (2)(B)(iv) of this subsection, provide appropriate assistance in the development of performance standards,

(ii) may, within 30 days after receiving proposed standards under paragraph (2)(B)(ii) of this subsection, provide comments on the proposed standards, particularly regarding the consistency of the proposed standards with such prototype.

(b)(1) Directors for Veterans' Employment and Training and Assistant Directors for Veterans' Employment and Training shall regularly monitor the performance of the specialists and representatives referred to in subsection (a)(1) of this section through the application of the standards required to be prescribed by subsection (a)(1).

(2) A Director for Veterans' Employment and Training for a State may submit to the head of the employment service in the State recommendations and comments in connection with each annual performance rating of such specialists and representatives in the State.

§2005. Cooperation of Federal agencies

(a) All Federal agencies shall furnish the Secretary such records, statistics, or information as the Secretary may deem necessary or appropriate in administering the provisions of this chapter, and shall otherwise cooperate with the Secretary in providing continuous employment and training opportunities for eligible veterans and eligible persons.

(b) For the purpose of assisting the Secretary and the Secretary of Veterans Affairs[16] in identifying employers with potential job training opportunities under the Veterans' Job Training Act (Public Law 98-77; 29 U.S.C. 1721 note) and otherwise in order to carry out this chapter, the Secretary of Defense shall provide, not more than 30 days after the date of the enactment of this subsection, the Secretary and the Secretary of Veterans Affairs[17] with any list maintained by the Secretary of Defense of employers participating in the National Committee for Employer Support of the Guard and Reserve and shall provide, on the 15th day of each month thereafter, updated information regarding the list.

§2006. Estimate of funds for administration; authorization of appropriations

(a) The Secretary shall estimate the funds necessary for the proper and efficient administration of this chapter and chapters 42 and 43 of this title. Such estimated sums shall include the annual amounts necessary for salaries, rents, printing and binding, travel, and communications. Sums thus estimated shall be included as a special item in the annual budget for the Department of Labor. Estimated funds necessary for proper counseling, placement, and training services to eligible veterans and eligible persons provided by the various State public employment service agencies shall each be separately identified in the budgets of those agencies as approved by the Department of Labor. Funds estimated pursuant to the first sentence of this subsection shall include amounts necessary in all of the States for the purposes specified in paragraph (5) of section 2002A(b) of this title and to fund the National Veterans' Employment and Training Services Institute under section 2009 of this title and shall be approved by the Secretary only if the level of funding proposed is in compliance with such sections. Each budget submission with respect to such funds shall include separate listings of the amount for the National Veterans' Employment and Training Services Institute and of the proposed numbers, by State, of disabled veterans' outreach program specialists appointed under section 2003A of this title and local veterans' employment representatives assigned under section 2004 of this title, together with information demonstrating the compliance of such budget submission with the funding requirments specified in the preceding sentence.

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[16] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[17] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

(b) There are authorized to be appropriated such sums as may be necessary for the proper and efficient administration of this chapter.

(c) In the event that the regular appropriations Act making appropriations for administrative expenses for the Department of Labor with respect to any fiscal year does not specify an amount for the purposes specified in subsection (b) of this section for that fiscal year, then of the amounts appropriated in such Act there shall be available only for the purposes specified in subsection (b) of this section such amount as was set forth in the budget estimate submitted pursuant to subsection (a) of this section.

(d) Any funds made available pursuant to subsections (b) and (c) of this section shall not be available for any purpose other than those specified in such subsections.

§2007. Administrative controls; annual report

(a) The Secretary shall establish administrative controls for the following purposes:

(1) To insure that each eligible veteran, especially veterans of the Vietnam era and disabled veterans, and each eligible person who requests assistance under this chapter shall promptly be placed in a satisfactory job or job training opportunity or receive some other specific form of assistance designed to enhance such veteran's and eligible person's employment prospects substantially, such as individual job development or employment counseling services.

(2) To determine whether or not the employment service agencies in each State have committed the necessary staff to insure that the provisions of this chapter are carried out; and to arrange for necessary corrective action where staff resources have been determined by the Secretary to be inadequate.

(b) The Secretary shall establish definitive performance standards for determining compliance by the State public employment service agencies with the provisions of this chapter and chapter 42 of this title. A full report as to the extent and reasons for any noncompliance by any such State agency during any fiscal year, together with the agency's plan for corrective action during the succeeding year, shall be included in the annual report of the Secretary required by subsection (c) of this section.

(c) Not later than February 1 of each year, the Secretary shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives on the success during the preceding program year of the Department of Labor and its affiliated State employment service agencies in carrying out the provisions of this chapter and programs for the provision of employment and training services to meet the needs of eligible veterans and eligible persons. The report shall include—

(1) specification, by State and by age group, of the numbers of eligible veterans, veterans of the Vietnam era, disabled veterans, special disabled veterans, and eligible persons who registered for assistance with the public employment service system and, for each of such categories, the numbers referred to and placed in permanent and other jobs, the numbers referred to and placed in jobs and job training programs supported by the Federal Government, the number counseled, and the number who received some, and the number who received no, reportable service;

(2) a comparison of the job placement rate for each of the categories of veterans and persons described in clause (1) of this subsection with the job placement rate for nonveterans of the same age groups registered for assistance with the public employment system in each State;

(3) any determination made by the Secretary during the preceding fiscal year under section 2006 of this title or subsection (a)(2) of this section and a statement of the reasons for such determination;

(4) a report on activities carried out during the preceding program year under sections 2003A and 2004 of this title; and

(5) a report on the operation during the preceding program year of programs for the provision of employment and training services designed to meet the needs of eligible veterans and eligible persons, including an evaluation of the effectiveness of such programs during such program year in meeting the requirements of section 2002A(b) of this title, the efficiency with which services were provided through such programs during such year, and such recommendations for further legislative action (including the need for any changes in the formulas governing the appointment of disabled veterans' outreach program specialists under section 2003A(a)(2) of this title and the assignment of local veterans' employment representatives under section 2004(b) of this title and the allocation of funds for the support of such specialists and representatives) relating to veterans' employment and training as the Secretary considers appropriate.

§2008. Cooperation and coordination

(a) In carrying out the Secretary's responsibilities under this chapter, the Secretary shall from time to time consult with the Secretary of Veterans Affairs[18] and keep the Secretary of Veterans Affairs[19] fully advised of activities carried out and all data gathered pursuant to this chapter to insure maximum cooperation and coordination between the Department of Labor and the Department of Veterans Affairs[20].

(b) The Secretary of Veterans Affairs[21] shall provide to appropriate employment service offices and Department of Labor offices, as designated by the Secretary, on a monthly or more frequent basis, the name and address of each employer located in the areas served by such offices that offer a program of job training which has been approved by the Secretary of Veterans Affairs[22] under section 7 of the Veterans' Job Training Act (29 U.S.C. 1721 note).

§2009. National Veterans' Employment and Training Services Institute

(a) In order to provide for such training as the Secretary considers necessary and appropriate for the efficient and effective provision of employment, job-training, counseling, placement, job-search, and related services to veterans, the Secretary shall establish and make available such funds as may be necessary to operate a National Veterans' Employment and Training Services Institute for the training of disabled veterans' outreach program specialists, local veterans' employment representatives, Directors for Veterans' Employment and Training, and Assistant Directors for Veterans' Employment and Training, Regional Administrators for Veterans' Employment and Training, and such other personnel involved in the provision of employment, job-training, counseling, placement, or related services to veterans as the Secretary considers appropriate, including travel expenses and per diem for attendance at the Institute.

(b) In implementing this section, the Secretary shall, as the Secretary considers appropriate, provide, out of program funds designated for the Institute, training for Veterans' Employment and Training Service personnel, including travel expenses and per diem to attend the Institute.

§2010. Secretary of Labor's Committee on Veterans' Employment

(a) There is established within the Department of Labor an advisory committee to be known as the "Secretary's Committee on Veterans' Employment". The committee shall meet at least quarterly for the purpose of bringing to the attention of the Secretary problems and issues relating to veterans' employment.

(b) Notwithstanding section 2002A(b) of this title, the committee shall be chaired by the Secretary. The Assistant Secretary of Labor for Veterans' Employment and Training shall serve as vice chairman of the committee. The committee shall include—

(1) representatives of—
  (A) the Secretary of Veterans Affairs[23];
  (B) the Secretary of Defense;
  (C) the Secretary of Health and Human Services;
  (D) the Secretary of Education,
  (E) the Director of the Office of Personnel Management;
  (F) the Chairman of the Equal Employment Opportunity Commission;
  (G) the Administrator of the Small Business Administration;
  (H) the Postmaster General; and
  (I) any other agency of the Federal Government which has had its request to have a representative on the committee approved by the Secretary; and
(2) a representative of each of the chartered veterans' organizations having a national employment program.

(c) Members of the committee shall serve without compensation or other reimbursement for their service on the committee.

§2010A. Special unemployment study

(a) The Secretary, through the Bureau of Labor Statistics, shall conduct, on a biennial basis, studies of unemployment among special disabled veterans and among veterans who served in the Vietnam Theater of Operations during the Vietnam era and promptly report to the Congress on the results of such studies.

(b) The first study under this section shall be completed not later than 180 days after the date of the enactment of this section.

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[18] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[19] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[20] P.L. 101-237, §423(b)(8)(B), struck out "Veterans' Administration" and substituted "Department of Veterans Affairs".

[21] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[22] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

[23] P.L. 101-237, §423(b)(8)(A), struck out "Administrator" and substituted "Secretary of Veterans Affairs".

CHAPTER 43—VETERANS' REEMPLOYMENT RIGHTS

§2021. Right to reemployment of inducted persons; benefits protected

(a) In the case of any person who is inducted into the Armed Forces of the United States under the Military Selective Service Act (or under any prior or subsequent corresponding law) for training and service and who leaves a position (other than a temporary position) in the employ of any employer in order to perform such training and service, and (1) receives a certificate described in section 9(a) of the Military Selective Service Act (relating to the satisfactory completion of military service), and (2) makes application for reemployment within ninety days after such person is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its territories, or possessions, or political subdivisions thereof, or the District of Columbia, such person shall—

(i) if still qualified to perform the duties of such position, be restored to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position, by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of the employer, be offered employment and, if such person so requests, be employed in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case;

(B) if such position was in the employ of a State, or political subdivision thereof, or a private employer, such person shall—

(i) if still qualified to perform the duties of such position, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or

(ii) if not qualified to perform the duties of such position by reason of disability sustained during such service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the employer's successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Nothing in this chapter shall excuse noncompliance with any statute or ordinance of a State or political subdivision thereof establishing greater or additional rights or protections than the rights and protections established pursuant to this chapter.

(b)(1) Any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section shall be considered as having been on furlough or leave of absence during such person's period of training and service in the Armed Forces, shall be so restored or reemployed without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration or reemployment.

(2) It is hereby declared to be the sense of the Congress that any person who is restored to or employed in a position in accordance with the provisions of clause (A) or (B) of subsection (a) of this section should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.

(3) Any person who seeks or holds a position described in clause (A) or (B) of subsection (a) of this section shall not be denied hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces.

(c) The rights granted by subsections (a) and (b) of this section to persons who left the employ of a State or political subdivision thereof and were inducted into the Armed Forces shall not diminish any rights such persons may have pursuant to any statute or ordinance of such State or political subdivision establishing greater or additional rights or protections.

§2022. Enforcement procedures

If any employer, who is a private employer or a State or political subdivision thereof, fails or refuses to comply with the provisions of section 2021(a), (b)(1), or (b)(3), or 2024 of this title, the district court of the United States for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, shall have the power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of such provisions, specifically to require such employer to comply with such provisions and to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. Any such compensation shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions. Upon application to the United States attorney or comparable official for any district in which such private employer maintains a place of business, or in which such State or political subdivision thereof exercises authority or carries out its functions, by any person claiming to be entitled to the benefits provided for in such provisions, such United States attorney or official, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and the prosecution thereof specifically to require such employer to comply with such provisions. No fees or court costs shall be taxed against any person who may apply for such benefits. In any such action only the employer shall be deemed a necessary party respondent. No State statute of limitations shall apply to any proceedings under this chapter.

§2023. Reemployment by the United States, territory, possession, or the District of Columbia

(a) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) and who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by any territory or possession, or political subdivision thereof, or by the District of Columbia, shall be so restored or reemployed by such agency or the successor to its functions, or by such territory, possession, political subdivision, or the District of Columbia. In any case in which, upon appeal of any person who was employed, immediately before entering the Armed Forces, by any agency in the executive branch of the Government or by the District of Columbia, the Director of the Office of Personnel Management finds that--

(1) such agency is no longer in existence and its functions have not been transferred to any other agency; or

(2) for any reason it is not feasible for such person to be restored to employment by such agency or by the District of Columbia;

the Director shall determine whether or not there is a position in any other agency in the executive branch of the Government or in the government of the District of Columbia for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists or by the government of the District of Columbia, as the case may be. The Director is authorized and directed to issue regulations giving full force and effect to the provisions of this section insofar as they relate to persons entitled to be restored to or employed in positions in the executive branch of the Government or in the government of the District of Columbia, including persons entitled to be reemployed under the last sentence of subsection (b) of this section. The agencies in the executive branch of the Government and the government of the District of Columbia shall comply with such rules, regulations, and orders issued by the Director pursuant to this subsection. The Director is authorized and directed when the Director finds, upon appeal of the person concerned, that any agency in the executive branch of the Government or the government of the District of Columbia has failed or refuses to comply with the provisions of this section, to issue an order specifically requiring such agency or the government of the District of Columbia to comply with such provisions and to compensate such person for any loss of salary or wages suffered by reason of failure to comply with such provisions, less any amounts received by such person through other employment, unemployment compensation, or readjustment allowances. Any such compensation ordered to be paid by the Director shall be in addition to and shall not be deemed to diminish any of the benefits provided for in such provisions, and shall be paid by the head of the agency concerned or by the government of the District of Columbia out of appropriations currently available for salary and expenses of such agency or government, and such appropriations shall be available for such purpose. As used in this chapter, the term "agency in the executive branch of the

Government" means any department, independent establishment, agency, or corporation in the executive branch of the United States Government (including the United States Postal Service and the Postal Rate Commission).

(b) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title, and who was employed, immediately before entering the Armed Forces, in the legislative branch of the Government, shall be so restored or employed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces. In any case in which it is not possible for any such person to be restored to or employed in a position in the legislative branch of the Government and such person is otherwise eligible to acquire a status for transfer to a position in the competitive service in accordance with section 3304(c) of title 5, the Director of the Office of Personnel Management shall, upon appeal of such person, determine whether or not there is a position in the executive branch of the Government for which such person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the Director determines that there is such a position, such person shall be offered employment and, if such person so requests, be employed in such position by the agency in which such position exists.

(c) Any person who is entitled to be restored to or employed in a position in accordance with the provisions of clause (A) of section 2021(a) of this title and who was employed, immediately before entering the Armed Forces, in the judicial branch of the Government, shall be so restored or reemployed by the officer who appointed such person to the position which such person held immediately before entering the Armed Forces.

§2024. Rights of persons who enlist or are called to active duty; Reserves

(a) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a Reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this section in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

(b)(1) Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enters upon active duty (other than for the purpose of determining physical fitness and other than for training), whether or not voluntarily, in the Armed Forces of the United States or the Public Health Service in response to an order or call to active duty shall, upon such person's relief from active duty under honorable conditions, be entitled to all of the reemployment rights and benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such active duty performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any such active duty, additional or otherwise, performed after August 1, 1961, does not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).

(2) Any member of a Reserve component of the Armed Forces of the United States who voluntarily or involuntarily enters upon active duty (other than for the purpose of determining physical fitness and other than for training) or whose active duty is voluntarily or involuntarily extended during a period when the President is authorized to order units of the Ready Reserve or members of a Reserve component to active duty shall have the service limitation governing eligibility for reemployment rights under subsection (b)(1) of this section extended by such member's period of such active duty, but not to exceed that period of active duty to which the President is authorized to order units of the Ready Reserve or members of a Reserve component. With respect to a member who voluntarily enters upon active duty or whose active duty is voluntarily extended, the provisions of this subsection shall apply only when such additional active duty is at the request and for the convenience of the Federal Government.

(c) Any member of a Reserve component of the Armed Forces of the United States who is ordered to an initial period of active duty for training of not less than twelve consecutive weeks shall, upon application for reemployment within thirty-one days after (1) such member's release from such active duty for training after satisfactory service, or (2) such member's discharge from hospitalization incident to such active duty for training, or one year after such member's scheduled release from such training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this chapter for persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), except that (A) any person restored to or employed in a position in accordance with the provisions of this subsection shall not be discharged from such position without cause within six months after that restoration, and (B) no reemployment rights granted by this subsection shall entitle any person to retention, preference, or displacement rights over any veteran with a superior claim under those provisions of title 5 relating to veterans and other preference eligibles.

(d) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall upon request be granted a leave of absence by such person's employer for the period required to perform active duty for training or inactive duty training in the Armed Forces of the United States. Upon such employee's release from a period of such active duty for training or inactive duty training, or upon such employee's discharge from hospitalization incident to that training, such employee shall be permitted to return to such employee's position with such seniority, status, pay, and vacation as such employee would have had if such employee had not been absent for such purposes. Such employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following such employee's release, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at such next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If such an employee is hospitalized incident to active duty for training or inactive duty training, such employee shall be required to report for work at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or within one year after such employee's release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this subsection is not qualified to perform the duties of such employee's position by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or such employer's successor in interest, such employee shall be offered employment and, if such person so requests, be employed by that employer or such employer's successor in interest in such other position the duties of which such employee is qualified to perform as will provide such employee like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such employee's case.

(e) Any employee not covered by subsection (c) of this section who holds a position described in clause (A) or (B) of section 2021(a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering, or determining, by a preinduction or other examination, physical fitness to enter the Armed Forces. Upon such employee's rejection, upon completion of such employee's preinduction or other examination, or upon such employee's discharge from hospitalization incident to such rejection or examination, such employee shall be permitted to return to such employee's position in accordance with the provisions of subsection (d) of this section.

(f) For the purposes of subsections (c) and (d) of this section, full-time training or other full-time duty performed by a member of the National Guard under section 316, 502, 503, 504, or 505 of title 32 is considered active duty for training. For the purposes of subsection (d) of this section, inactive duty training performed by that member under section 502 of title 32 or section 206, 301, 309, 402, or 1002 of title 37 is considered inactive duty training.

(g) Any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty for not more than 90 days under section 673b of title 10, United States Code, whether or not voluntarily, shall be entitled to all reemployment rights and benefits provided under subsection (c) of this section for persons ordered to an initial period of active duty for training of not less than twelve consecutive weeks; and shall have the service limitation governing eligibility for reemployment rights under subsections (a) and (b)(1) of this section extended by the period of such active duty.

§2025. Assistance in obtaining reemployment

The Secretary of Labor, through the Office of Veterans' Reemployment Rights, shall render aid in the replacement in their former positions or reemployment of persons who have satisfactorily completed any period of active duty in the Armed Forces or the Public Health Service. In rendering such aid, the Secretary shall use existing Federal and State agencies engaged in similar or related activities and shall utilize the assistance of volunteers.

§2026. Prior rights for reemployment

In any case in which two or more persons who are entitled to be restored to or employed in a position under the provisions of this chapter or of any other law relating to similar reemployment benefits left the same position in order to enter the Armed Forces, the person who left such position first shall have the prior right to be restored thereto or reemployed on the basis thereof, without prejudice to the reemployment rights of the other person or persons to be restored or reemployed.

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§3005. Joint applications for social security and dependency and indemnity compensation

The Administrator and the Secretary of Health and Human Services shall jointly prescribe forms for use by survivors of members and former members of the uniformed services in filing application for benefits under chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). Each such form shall request information sufficient to constitute an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.); and when an application on such form has been filed with either the Administrator or the Secretary of Health and Human Services, it shall be deemed to be an application for benefits under both chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.). A copy of each such application filed with the Administrator, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Administrator with such application, and which may be needed by the Secretary in connection therewith, shall be transmitted by the Administrator to the Secretary; and a copy of each such application filed with the Secretary, together with any additional information and supporting documents (or certifications thereof) which may have been received by the Secretary with such form, and which may be needed by the Administrator in connection therewith, shall be transmitted by the Secretary to the Administrator. The preceding sentence shall not prevent the Secretary and the Administrator from requesting the applicant, or any other individual, to furnish such additional information as may be necessary for purposes of chapter 13 of this title and title II of the Social Security Act (42 U.S.C. 401 et seq.), respectively.

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§3101. Nonassignability and exempt status of benefits

(a) Payments of benefits due or to become due under any law administered by the Veterans' Administration shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.

(b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Veterans' Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.

(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in[24] chapter 73 of title 10.

(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

(B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

(i) the term "records of the agency" shall be considered to refer to the records of the department of the Secretary concerned; and

(ii) the term "agency" in clauses (3) and (4) shall be considered to refer to such department.

(4) Funds collected under this subsection shall be credited to the Department of Defense Military Retirement Fund under chapter 74 of title 10.

(d) Notwithstanding subsection (a) of this section, payments of benefits under laws administered by the Veterans' Administration shall not be exempt from levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (26 U.S.C. 6331 et seq.).

(e) In the case of a person who—

(1) has been determined to be eligible to receive pension or compensation under laws administered by the Veterans' Administration but for the receipt by such person of pay pursuant to any provision of law providing retired or retirement pay to members or former members of the Armed Forces or commissioned officers of the National Oceanic and Atmospheric Administration or of the Public Health Service; and

(2) files a waiver of such pay in accordance with section 3105 of this title in the amount of such pension or compensation before the end of the one-year period beginning on the date such person is notified by the Veterans' Administration of such person's eligibility for such pension or compensation,

the retired or retirement pay of such person shall be exempt from taxation, as provided in subsection (a) of this section, in an amount equal to the amount of pension or compensation which would have been paid to such person but for the receipt by such person of such pay.

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§3103A. Minimum active-duty service requirement

(a) Notwithstanding any other provision of law, any requirements for eligibility for or entitlement to any benefit under this title or any other law administered by the Veterans' Administration that are based on the length of active duty served by a person who initially enters such service after September 7, 1980, shall be exclusively as prescribed in this title.

(b)(1) Except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty, is not eligible by reason of such period of active duty for any benefit under this title or any other law administered by the Veterans' Administration.

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[24] P.L. 101-189, §1404(b)(2), struck out "of subchapter I or II". Executed as if §1404(b)(2) struck out "subchapter I or II of".

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty after October 16, 1981, and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to a person who is discharged or released from active duty under section 1171 or 1173 of title 10;

(B) to a person who is discharged or released from active duty for a disability incurred or aggravated in line of duty;

(C) to a person who has a disability that the Administrator has determined to be compensable under chapter 11 of this title;

(D) to the provision of a benefit for or in connection with a service-connected disability, condition, or death;

(E) to benefits under chapter 19 of this title; or

(F) to benefits under chapter 30 of this title by reason of—

(i) a discharge or release from active duty for the convenience of the Government, as described in sections 1411(a)(1)(A)(ii)(II) and 1412(b)(1)(A)(iv) of this title;

(ii) a discharge or release from active duty for a medical condition which preexisted service on active duty and which the Administrator determines is not service connected, as described in clauses (A)(ii)(I) and (B)(ii)(I) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(ii) of this title;[25]

(iii) an involuntary discharge or release from active duty for the convenience of the Government as a result of a reduction in force, as described in clauses (A)(ii)(III) and (B)(ii)(III) of section 1411(a)(1) of this title and in section 1412(b)(1)(A)(v) of this title; or[26]

(iv) a discharge or release from active duty for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as described in section 1411(a)(1)(A)(ii)(I) of this title.[27]

(c)(1) Except as provided in paragraph (2) of this subsection, no dependent or survivor of a person as to whom subsection (b) of this section requires the denial of benefits shall, by reason of such person's period of active duty, be provided with any benefit under this title or any other law administered by the Veterans' Administration.

(2) Paragraph (1) of this subsection does not apply to benefits under chapters 19 and 37 of this title.

(d)(1) Notwithstanding any other provision of law and except as provided in paragraph (3) of this subsection, a person described in paragraph (2) of this subsection who is discharged or released from a period of active duty before completing the shorter of—

(A) 24 months of continuous active duty, or

(B) the full period for which such person was called or ordered to active duty,

is not eligible by reason of such period of active duty for any benefit under Federal law (other than this title or any other law administered by the Veterans' Administration), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

(2) Paragraph (1) of this subsection applies—

(A) to any person who originally enlists in a regular component of the Armed Forces after September 7, 1980; and

(B) to any other person who enters on active duty on or after the date of the enactment of this subsection[28] and has not previously completed a continuous period of active duty of at least 24 months or been discharged or released from active duty under section 1171 of title 10.

(3) Paragraph (1) of this subsection does not apply—

(A) to any person described in clause (A), (B), or (C) of subsection (b)(3) of this section; or

(B) with respect to a benefit under (i) the Social Security Act other than additional wages deemed to have been paid, under section 229(a) of the Social

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[25] P.L. 101-510, §562(a)(4)(A), struck out "or".

[26] P.L. 101-510, §562(a)(4)(B), struck out the period and substituted "; or".

[27] P.L. 101-510, §562(a)(4)(C), added clause (iv).

[28] October 14, 1982 [P.L. 97-306, 96 Stat. 1445].

Security Act (42 U.S.C. 429(a)), for any calendar quarter beginning on or after the date of the enactment of this subsection, or (ii) title 5 other than a benefit based on meeting the definition of preference eligible in section 2108(3) of such title.

(e) For the purposes of this section, the term "benefit" includes a right or privilege, but does not include a refund of a participant's contributions to the educational benefits program provided by chapter 32 of this title.

(f) Nothing in this section shall be construed to deprive any person of any procedural rights, including any rights to assistance in applying for or claiming a benefit.

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§5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools[29]:

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

[30]

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved.[31] Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical appropriation and to funds that have been allotted to the facility that furnished the resource involved[32].

(c) Eligibility for hospital care and medical services furnished any veteran pursuant to this section shall be subject to the same terms as though provided in a Veterans' Administration health care facility, and provisions of this title applicable to persons receiving hospital care or medical services in a Veterans' Administration health care facility shall apply to veterans treated hereunder.

(d) When a Veterans' Administration health care facility provides hospital care or medical services, pursuant to a contract or agreement authorized by this section, to an individual who is not eligible for such care or services under chapter 17 of this title and who is entitled to hospital or medical insurance benefits under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), such benefits shall be paid, notwithstanding any condition, limitation, or other provision in that title which would otherwise preclude such payment, in accordance with—

(1) rates prescribed by the Secretary of Health and Human Services, after consultation with the Administrator, and

(2) procedures jointly prescribed by the Secretary and the Administrator to assure reasonable quality of care and services and efficient and economical utilization of resources,

to such facility therefor or, if the contract or agreement so provides, to the community health care facility which is a party to the contract or agreement.

(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include—

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[29] P.L. 101-366, §202(b)(1)(A), struck out "hospitals and other hospitals (or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions) or medical schools or clinics in the medical community" and substituted "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools".

[30] P.L. 101-366, §202(b)(1)(B), struck out "The Administrator may determine the geographical limitations of a medical community as used in this section.".

[31] P.L. 101-366, §202(b)(2)(A), struck out "a charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment." and substituted "a methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved.".

[32] P.L. 101-366, §202(b)(2)(B), inserted "and to funds that have been allotted to the facility that furnished the resource involved".

(1) an appraisal of the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise; and

(2) recommendations for the improvement or more effective administration of such activities.

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[*Internal References.*—S.S. Act §§202(o); 210(a), (l), and (m); 217(b); 224(a); 901(c); and 1866(a) cite title 38, U.S. Code; and the catchlines for S.S. Act §229(a), title XVIII, part A and §1814(c) have footnotes referring to title 38, U.S. Code. P.L. 90-248, §402 catchline (this volume), has a footnote to title 38, U.S. Code.]

TITLE 44, UNITED STATES CODE

PUBLIC PRINTING AND DOCUMENTS

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§3502. Definitions

As used in this chapter—

(1) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but does not include the General Accounting Office, Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, or Government-owned contractor-operated facilities including laboratories engaged in national defense research and production activities;

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[*Internal Reference.*—S.S. Act §1139(l) cites §3502 of title 44, U.S. Code.]

REVISED STATUTES OF THE UNITED STATES

2d EDITION, 1878[1]

[CONTRACTS]

SEC. 3709. [41 U.S.C. 5] Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $25,000, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 29 of the Surplus Property Act of 1944 (50 U.S.C. App. 1638)[2], (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

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[*Internal References.*—S.S. Act §§1842(b) and 1886(e) cite the Revised Statutes.]

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[1] Approved March 2, 1861, chapter 84, §10, 12 Stat. 220. P.L. 79-600, §9, revised §3709 of the Revised Statutes of the United States, in its entirety, effective August 2, 1946, 60 Stat. 809.
The provision has been further amended.

[2] See 40 U.S.C. §§471 et seq.

56th Congress, Ch. 872, Approved March 3, 1901 (31 Stat. 1449)
National Bureau of Standards Act

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Sec. 20. [15 U.S.C. 278g-3]

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(d) As used in this section—

(1) the term "computer system"—

(A) means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information; and

(B) includes—

(i) computers;

(ii) ancillary equipment;

(iii) software, firmware, and similar procedures;

(iv) services, including support services; and

(v) related resources as defined by regulations issued by the Administrator for General Services pursuant to section 111 of the Federal Property and Administrative Services Act of 1949;

(2) the term "Federal computer system"—

(A) means a computer system operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer system) on behalf of the Federal Government to accomplish a Federal function; and

(B) includes automatic data processing equipment as that term is defined in section 111(a)(2) of the Federal Property and Administrative Services Act of 1949;

(3) the term "operator of a Federal computer system" means a Federal agency, contractor of a Federal agency, or other organization that processes information using a computer system on behalf of the Federal Government to accomplish a Federal function;

(4) the term "sensitive information" means any information, the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive order or an Act of Congress to be kept secret in the interest of national defense or foreign policy; and

(5) the term "Federal agency" has the meaning given such term by section 3(b) of the Federal Property and Administrative Services Act of 1949.

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[*Internal Reference.*—P.L. 100-235, §7 (this volume) cites Section 20(d) of the National Bureau of Standards Act.]

P.L. 67-85, Approved November 2, 1921 (42 Stat. 208)
[Act of November 2, 1921]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 13] That the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:

General support and civilization, including education.

For relief of distress and conservation of health.

For industrial assistance and advancement and general administration of Indian property.

For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

Notwithstanding any other provision of this Act or any other law, postsecondary schools administered by the Secretary of the Interior for Indians, and which meet the definition of an "institution of higher education" under section 1201 of the Higher Education Act of 1965, shall be eligible to participate in and receive appropriated funds under any program authorized by the Higher Education Act of 1965 or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

[*Internal Reference.*—S.S. Act §1611(c) cites the Act of November 2, 1921 (42 Stat. 208).]

P.L. 71-10, Approved June 15, 1929 (46 Stat. 11)

Agricultural Marketing Act

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SEC. 15. [12 U.S.C. 1141j]

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(g) "Agricultural commodity" defined. As used in this Act, the term "agricultural commodity" includes, in addition to other agricultural commodities, crude gum (oleoresin) from a living tree, and the following products as processed by the original producer of the crude gum (oleoresin) from which derived: Gum spirits of turpentine and gum rosin, as defined in the Naval Stores Act, approved March 3, 1923.

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[*Internal Reference.*—S.S. Act §210(f) cites the Agricultural Marketing Act.]

P.L. 71-325, Approved June 10, 1930 (46 Stat. 531)

Perishable Agricultural Commodities Act, 1930

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SEC. 14. [7 U.S.C. 499n] (a) The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State, or municipal agencies and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this Act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this Act: *And provided further*, That official inspection certificates for fresh fruits and vegetables issued by the Secretary of Agriculture pursuant to any law shall be received by all officers and all courts of the United States, in all proceedings under this Act, and in all transactions upon contract markets under Commodities

Exchange Act (7 U.S.C. Supp. 2, secs. 1 to 17(a)), as prima-facie evidence of the truth of the statements therein contained;[1]

(b) Whoever shall falsely make, issue, alter, forge, or counterfeit, or cause or procure to be falsely made, issued, altered, forged, or counterfeited, or willingly aid, cause, procure or assist in, or be a party to the false making, issuing, altering, forging, or counterfeiting of any certificate of inspection issued under authority of this Act, the Produce Agency Act of March 3, 1927 (7 U.S.C., sec. 491-497), or any Act making appropriations for the Department of Agriculture; or shall utter or publish as true or cause to be uttered or published as true any such false, forged, altered, or counterfeited certificate, for a fraudulent purpose, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for a period of not more than one year, or both, at the discretion of the court.

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[*Internal Reference.*—S.S. Act §218(b) cites the Perishable Agricultural Commodities Act, 1930.]

P.L. 73-30, Approved June 6, 1933 (48 Stat. 113)
Wagner-Peyser Act

SECTION 1. [29 U.S.C. 49] In order to promote the establishment and maintenance of a national system of public employment offices, the United States Employment Service shall be established and maintained within the Department of Labor.

SEC. 2. [29 U.S.C. 49a] For purposes of this Act—

(1) the term "chief elected official or officials" has the same meaning given that term under the Job Training Partnership Act;

(2) the term "private industry council" has the same meaning given that term under the Job Training Partnership Act;

(3) the term "Secretary" means the Secretary of Labor;

(4) the term "service delivery area" has the same meaning given that term under the Job Training Partnership Act; and

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

SEC. 3. [29 U.S.C. 49b] (a) The United States Employment Service shall assist in coordinating the State public employment services throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the States.

(b) It shall be the duty of the Secretary of Labor to assure that unemployment insurance and employment service offices in each State, as appropriate, upon request of a public agency administering or supervising the administration of a State plan approved under part A of title IV of the Social Security Act, of a public agency charged with any duty or responsibility under any program or activity authorized or required under part D of title IV of such Act, or of a State agency charged with the administration of the food stamp program in a State under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), shall (and, notwithstanding any other provision of law, is authorized to) furnish to such agency making the request, from any data contained in the files of any such office, information with respect to any individual specified in the request as to (1) whether such individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received by such individual, (2) the current (or most recent) home address of such individual, and (3) whether such individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor.

SEC. 4. [29 U.S.C. 49c] In order to obtain the benefits of appropriations apportioned under section 5, a State shall, through its legislature, accept the provisions of this Act and designate or authorize the creation of a State agency vested with all powers necessary to cooperate with the United States Employment Service under this Act.

SEC. 5. [29 U.S.C. 49d] (a) There is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such amounts from time to time as the Congress may deem necessary to carry out the purposes of this Act.

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[1] As in original. Semicolon should be replaced by a period.

(b) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State which—

(1) except in the case of Guam, has an unemployment compensation law approved by the Secretary under the Federal Unemployment Tax Act and is found to be in compliance with section 303 of the Social Security Act, as amended,

(2) is found to have coordinated the public employment services with the provision of unemployment insurance claimant services, and

(3) is found to be in compliance with this Act,

such amounts as the Secretary determines to be necessary for allotment in accordance with section 6.

(c)(1) Beginning with fiscal year 1985 and thereafter appropriations for any fiscal year for programs and activities assisted or conducted under this Act shall be available for obligation only on the basis of a program year. The program year shall begin on July 1 in the fiscal year for which the appropriation is made.

(2) Funds obligated for any program year may be expended by the State during that program year and the two succeeding program years and no amount shall be deobligated on account of a rate of expenditure which is consistent with the program plan.

(3)(A) Appropriations for fiscal year 1984 shall be available both to fund activities for the period between October 1, 1983, and July 1, 1984, and for the program year beginning July 1, 1984.

(B) There are authorized to be appropriated such additional sums as may be necessary to carry out the provisions of this paragraph for the transition to program year funding.

SEC. 6. [29 U.S.C. 49e] (a) From the amounts appropriated pursuant to section 5 for each fiscal year, the Secretary shall first allot to Guam and the Virgin Islands an amount which, in relation to the total amount available for the fiscal year, is equal to the allotment percentage which each received of amounts available under this Act in fiscal year 1983.

(b)(1) Subject to paragraphs (2), (3), and (4) of this subsection, the Secretary shall allot the remainder of the sums appropriated and certified pursuant to section 5 of this Act for each fiscal year among the States as follows:

(A) two-thirds of such sums shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State as compared to the total number of such individuals in all States; and

(B) one-third of such sums shall be allotted on the basis of the relative number of unemployed individuals in each State as compared to the total number of such individuals in all States.

For purposes of this paragraph, the number of individuals in the civilian labor force and the number of unemployed individuals shall be based on data for the most recent calendar year available, as determined by the Secretary of Labor.

(2) No State's allotment under this section for any fiscal year shall be less than 90 percent of its allotment percentage for the fiscal year preceding the fiscal year for which the determination is made. For the purpose of this section, the Secretary shall determine the allotment percentage for each State (including Guam and the Virgin Islands) for fiscal year 1984 which is the percentage that the State received under this Act for fiscal year 1983 of the total amounts available for payments to all States for such fiscal year. For each succeeding fiscal year, the allotment percentage for each such State shall be the percentage that the State received under this Act for the preceding fiscal year of the total amounts available for allotments for all States for such fiscal year.

(3) For each fiscal year, no State shall receive a total allotment under paragraphs (1) and (2) which is less than 0.28 percent of the total amount available for allotments for all States.

(4) The Secretary shall reserve such amount, not to exceed 3 percent of the sums available for allotments under this section for each fiscal year, as shall be necessary to assure that each State will have a total allotment under this section sufficient to provide staff and other resources necessary to carry out employment service activities and related administrative and support functions on a statewide basis.

(5) The Secretary shall, not later than March 15 of fiscal year 1983 and each succeeding fiscal year, provide preliminary planning estimates and shall, not later than May 15 of each such fiscal year, provide final planning estimates, showing each State's projected allocation for the following year.

SEC. 7. [29 U.S.C. 49f] (a) Ninety percent of the sums allotted to each State pursuant to section 6 may be used—

(1) for job search and placement services to job seekers including counseling, testing, occupational and labor market information, assessment, and referral to employers;

(2) for appropriate recruitment services and special technical services for employers; and

(3) for any of the following activities:

(A) evaluation of programs;

(B) developing linkages between services funded under this Act and related Federal or State legislation, including the provision of labor exchange services at education sites;

(C) providing services for workers who have received notice of permanent layoff or impending layoff, or workers in occupations which are experiencing limited demand due to technological change, impact of imports, or plant closures;

(D) developing and providing labor market and occupational information;

(E) developing a management information system and compiling and analyzing reports therefrom; and

(F) administering the work test for the State unemployment compensation system and providing job finding and placement services for unemployment insurance claimants.

(b) Ten percent of the sums allotted to each State pursuant to section 6 shall be reserved for use in accordance with this subsection by the Governor of each such State to provide—

(1) performance incentives for public employment service offices and programs, consistent with performance standards established by the Secretary, taking into account direct or indirect placements (including those resulting from self-directed job search or group job search activities assisted by such offices or programs), wages on entered employment, retention, and other appropriate factors;

(2) services for groups with special needs, carried out pursuant to joint agreements between the employment service and the appropriate private industry council and chief elected official or officials or other public agencies or private nonprofit organizations; and

(3) the extra costs of exemplary models for delivering services of the types described in subsection (a).

(c)(1) Funds made available to States under this section may be used to provide additional funds under an applicable program if—

(A) such program otherwise meets the requirements of this Act and the requirements of the applicable program;

(B) such program serves the same individuals that are served under this Act;

(C) such program provides services in a coordinated manner with services provided under this Act; and

(D) such funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(2) For purposes of this subsection, the term "applicable program" means any program under any of the following provisions of law:

(A) The Carl D. Perkins Vocational and Applied Technology Education Act.

(B) Section 123, title II, and title III of the Job Training Partnership Act.[1]

(d)[2] In addition to the services and activities otherwise authorized by this Act, the United States Employment Service or any State agency designated under this Act may perform such other services and activities as shall be specified in contracts for payment or reimbursement of the costs thereof made with the Secretary of Labor or with any Federal, State, or local public agency, or administrative entity under the Job Training Partnership Act, or private nonprofit organization.

SEC. 8. [29 U.S.C. 49g] (a) Any State desiring to receive the benefits of this Act shall, by the agency designated to cooperate with the United States Employment Service, submit to the Secretary of Labor detailed plans for carrying out the provisions of this Act within such State.

(b) Prior to submission of such plans to the Secretary—

(1) the employment service shall develop jointly with each appropriate private industry council and chief elected official or officials for the service delivery area (designated under the Job Training Partnership Act) those components of such plans applicable to such area;

(2) such plans shall be developed taking into consideration proposals developed jointly by the appropriate private industry council and chief elected official or officials in the service delivery area affected;

(3) such plans shall be transmitted to the State job training coordinating council (established under such Act) which shall certify such plans if it determines (A) that the components of such plans have been jointly agreed to by the employment

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[1] P.L. 101-392, §5(b)(2), added this new subsection (c).

[2] P.L. 101-392, §5(b)(1), redesignated subsection (c) as subsection (d).

service and appropriate private industry council and chief elected official or officials; and (B) that such plans are consistent with the Governor's coordination and special services plan under the Job Training Partnership Act;

(4) if the State job training coordinating council does not certify that such plans meet the requirements of clauses (A) and (B) of paragraph (3), such plans shall be returned to the employment service for a period of thirty days for it to consider, jointly with the appropriate private industry council and chief elected official or officials, the council's recommendations for modifying such plans; and

(5) if the employment service and the appropriate private industry council and chief elected official or officials fail to reach agreement upon such components of such plans to be submitted finally to the Secretary, such plans submitted by the State agency shall be accompanied by such proposed modifications as may be recommended by any appropriate disagreeing private industry council and chief elected official or officials affected, and the State job training coordinating council shall transmit to the Secretary its recommendations for resolution thereof.

(c) The Governor of the State shall be afforded the opportunity to review and transmit to the Secretary proposed modifications of such plans submitted.

(d) Such plans shall include provision for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes. In those States where a State board, department, or agency exists which is charged with the administration of State laws for vocational rehabilitation of physically handicapped persons, such plans shall include provision for cooperation between such board, department, or agency and the agency designated to cooperate with the United States Employment Service under this Act.

(e) If such plans are in conformity with the provisions of this Act and reasonably appropriate and adequate to carry out its purposes, they shall be approved by the Secretary of Labor and due notice of such approval shall be given to the State agency.

SEC. 9. [29 U.S.C. 49h](a)(1) Each State shall establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds paid to the recipient under this Act. The Director of the Office of Management and Budget, in consultation with the Comptroller General of the United States, shall establish guidance for the proper performance of audits. Such guidance shall include a review of fiscal controls and fund accounting procedures established by States under this section.

(2) At least once every two years, the State shall prepare or have prepared an independent financial and compliance audit of funds received under this Act.

(3) Each audit shall be conducted in accordance with applicable auditing standards set forth in the financial and compliance element of the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General of the United States.

(b)(1) The Comptroller General of the United States shall evaluate the expenditures by States of funds received under this Act in order to assure that expenditures are consistent with the provisions of this Act and to determine the effectiveness of the State in accomplishing the purposes of this Act. The Comptroller General shall conduct evaluations whenever determined necessary and shall periodically report to the Congress on the findings of such evaluations.

(2) Nothing in this Act shall be deemed to relieve the Inspector General of the Department of Labor of his responsibilities under the Inspector General Act.

(3) For the purpose of evaluating and reviewing programs established or provided for by this Act, the Comptroller General shall have access to and the right to copy any books, accounts, records, correspondence, or other documents pertinent to such programs that are in the possession, custody, or control of the State.

(c) Each State shall repay to the United States amounts found not to have been expended in accordance with this Act. No such finding shall be made except after notice and opportunity for a fair hearing. The Secretary may offset such amounts against any other amount to which the recipient is or may be entitled under this Act.

SEC. 10. [29 U.S.C. 49i] (a) Each State shall keep records that are sufficient to permit the preparation of reports required by this Act and to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully.

(b)(1) The Secretary may investigate such facts, conditions, practices, or other matters which the Secretary finds necessary to determine whether any State receiving funds under this Act or any official of such State has violated any provision of this Act.

(2)(A) In order to evaluate compliance with the provisions of this Act, the Secretary shall conduct investigations of the use of funds received by States under this Act.

(B) In order to insure compliance with the provisions of this Act, the Comptroller General of the United States may conduct investigations of the use of funds received under this Act by any State.

(3) In conducting any investigation under this Act, the Secretary or the Comptroller General of the United States may not request new compilation of information not readily available to such State.

(c) Each State receiving funds under this Act shall—

(1) make such reports concerning its operations and expenditures in such form and containing such information as shall be prescribed by the Secretary, and

(2) establish and maintain a management information system in accordance with guidelines established by the Secretary designed to facilitate the compilation and analysis of programmatic and financial data necessary for reporting, monitoring, and evaluating purposes.

Sec. 11. [29 U.S.C. 49j] (a) The director shall establish a Federal Advisory Council composed of men and women representing employers and employees in equal numbers and the public for the purpose of formulating policies and discussing problems relating to employment and insuring impartiality, neutrality, and freedom from political influence in the solution of such problems. Members of such council shall be selected from time to time in such manner as the director shall prescribe and shall serve without compensation, but when attending meetings of the council they shall be allowed necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law for civilian employees in the executive branch of the Government. The council shall have access to all files and records of the United States Employment Service. The director shall also require the organization of similar State advisory councils composed of men and women representing employers and employees in equal numbers and the public. Nothing in this section shall be construed to prohibit the Governor from carrying out functions of such State advisory council through the State job training coordinating council in accordance with section 122(c) of the Job Training Partnership Act.

(b) In carrying out the provisions of this Act the director is authorized and directed to provide for the giving of notice of strikes or lockouts to applicants before they are referred to employment.

Sec. 12. [29 U.S.C. 49k] The director, with the approval of the Secretary of Labor, is hereby authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

Sec. 13. [29 U.S.C. 49l] (a) The Secretary is authorized to establish performance standards for activities under this Act which shall take into account the differences in priorities reflected in State plans.

(b)(1) Nothing in this Act shall be construed to prohibit the referral of any applicant to private agencies as long as the applicant is not charged a fee.

(2) No funds paid under this Act may be used by any State for advertising in newspapers for high paying jobs unless such State submits an annual report to the Secretary beginning in December 1984 concerning such advertising and the justifications therefor, and the justification may include that such jobs are part of a State industrial development effort.

Sec. 14. [29 U.S.C. 49l-1] There are authorized to be appropriated such sums as may be necessary to enable the Secretary to provide funds through reimburseable[3] agreements with the States to operate statistical programs which are essential for development of estimates of the gross national product and other national statistical series, including those related to employment and unemployment.

Sec. 15. [29 U.S.C. 49 note] This Act may be cited as the "Wagner-Peyser Act".

[*Internal References.*—S.S. Act §901(c) cites the Act of June 6, 1933 and S.S. Act title IV, parts A and D and §403 catchlines and §901(c) referring to P.L. 73-30.]

P.L. 73-479, Approved June 27, 1934 (48 Stat. 1246)
National Housing Act[1]

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HOUSING FOR ELDERLY PERSONS

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[3] As in original. Probably should be "reimbursable".

[1] See P.L. 94-375, §2(h), with respect to exclusion of assistance from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act in this volume.

SEC. 231. [12 U.S.C. 1715v] (a) The purpose of this section is to assist in relieving the shortage of housing for elderly persons and to increase the supply of rental housing for elderly persons.

For the purposes of this section—

(1) the term "housing" means eight or more new or rehabilitated living units, not less than 50 per centum of which are specially designed for the use and occupancy of elderly persons;

(2) the term "elderly person" means any person, married or single, who is sixty-two years of age or over; and

(3) the terms "mortgage", "mortgagee", "mortgagor", and "maturity date" shall have the meanings respectively set forth in section 207 of this Act.

(b) The Secretary is authorized to insure any mortgage (including advances on mortgages during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and to make commitments for insurance of such mortgages prior to the date of their execution or disbursement thereon.

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(f) Notwithstanding any of the provisions of this section, the housing provided under this section may include family units which are specially designed for the use and occupancy of any person or family qualifying as a handicapped family as defined in section 202 of the Housing Act of 1959, and such special facilities as the Secretary deems adequate to serve handicapped families (as so defined). The Secretary may also prescribe procedures to secure to such families preference or priority of opportunity to rent the living units specially designed for their use and occupancy.

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HOMEOWNERSHIP FOR LOWER INCOME FAMILIES

SEC. 235. [12 U.S.C. 1715z] (a)(1) For the purpose of assisting lower income families in acquiring homeownership or in acquiring membership in a cooperative association operating a housing project, the Secretary is authorized to make, and to contract to make, periodic assistance payments on behalf of such homeowners and cooperative members. The assistance shall be accomplished through payments to mortgagees holding mortgages meeting the special requirements specified in this section or which mortgages are assisted under a State or local program providing assistance through loans, loan insurance or tax abatement. In making such assistance available the Secretary shall give preference to low-income families who, without such assistance, would be likely to be involuntarily displaced (including those who would be likely to be displaced from rental units which are to be converted into a condominium project or a cooperative project). Such assistance may include the acquisition of a condominium or a membership in a cooperative association.

(2)(A) Notwithstanding any other provision of this section, the Secretary is authorized to make periodic assistance payments under this section on behalf of families whose incomes do not exceed the maximum income limits prescribed pursuant to subsection (h)(2) of this section for the purpose of assisting such families in acquiring ownership of a manufactured home consisting of two or more modules and a lot on which such manufactured home is or will be situated, except that periodic assistance payments pursuant to this paragraph shall not be made with respect to more than 20 per centum of the total number of units with respect to which assistance is approved under this section after January 1, 1976. Assistance payments under this section pursuant to this paragraph shall be accomplished through payments on behalf of an owner of lower-income of a manufactured home as described in the preceding sentence to the financial institution which makes the loan, advance of credit, or purchase of an obligation representing the loan or advance of credit to finance the purchase of the manufactured home and the lot on which such manufactured home is or will be situated, but only if insurance under section 2 of this Act covering such loan, advance of credit, or obligation has been granted to such institution.

(B) Notwithstanding the provisions of subsection (c) of this section, assistance payments provided pursuant to this paragraph shall be in an amount not exceeding the lesser of—

(i) the balance of the monthly payment for principal, interest, real and personal property taxes, insurance, and insurance premium chargeable under section 2 of this Act due under the loan or advance of credit remaining unpaid after applying 20 per centum of the manufactured homeowner's income; or

(ii) the difference between the amount of the monthly payment for principal, interest, and insurance premium chargeable under section 2 of this Act which the manufactured homeowner is obligated to pay under the loan or advance of credit and the monthly payment of principal and interest which the owner would be obligated to pay if the loan or advance of credit were to bear interest at a rate derived by subtracting from the interest rate applicable to such loan or advance of credit the interest rate differential between the maximum interest rate plus mortgage insurance premium applicable to mortgages insured under subsection (i) of this section at the time such loan or advance of credit is made and the interest rate which such mortgages are presumed, under regulations prescribed by the Secretary, to bear for purposes of subsection (c)(2) of this section.

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RENTAL AND COOPERATIVE HOUSING FOR LOWER INCOME FAMILIES

SEC. 236. [12 U.S.C. 1715z-1] (a) For the purpose of reducing rentals for lower income families, the Secretary is authorized to make, and to contract to make, periodic interest reduction payments on behalf of the owner of a rental housing project designed for occupancy by lower income families, which shall be accomplished through payments to morgagees[2] holding mortgages meeting the special requirements specified in this section.

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(j) * * *

(6) With the approval of the Secretary, the mortgagor may sell the individual dwelling units to lower income or elderly or handicapped purchasers. The Secretary may consent to the release of the mortgagor from his liability under the mortgage and the credit instrument secured thereby, or consent to the release of parts of the mortgaged property from the lien of the mortgage, upon such terms and conditions as he may prescribe, and the mortgage may provide for such release.

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SPECIAL MORTGAGE INSURANCE ASSISTANCE

SEC. 237. [12 U.S.C. 1715z-2] (a) The purpose of this section is to help provide adequate housing for families of low and moderate income, including those who, for reasons of credit history, irregular income patterns caused by seasonal employment, or other factors, are unable to meet the credit requirements of the Secretary for the purchase of a single-family home financed by a mortgage insured under section 203, 220, 221, 234, or 235(j)(4), but who, through the incentive of homeownership and counseling assistance, appear to be able to achieve homeownership.

(b) The Secretary is authorized upon application by the mortgagee to insure under this section any mortgage meeting the requirements of this section.

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[*Internal References.*—S.S. Act §1612(b) cites the National Housing Act and S.S. Act §§1612(b) and 1613(a) catchlines and §402(a) have footnotes referring to P.L. 73-479.]

P.L. 75-162, Approved June 24, 1937 (50 Stat. 307)[1]

Railroad Retirement Act of 1974

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ANNUITY ELIGIBILITY REQUIREMENTS

SEC. 2. [45 U.S.C. 231a] (a)(1) The following-described individuals, if they shall have completed ten years of service and shall have filed application for annuities, shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to annuities in the amounts provided under section 3 of this Act—

(i) individuals who have attained retirement age (as defined in section 216(l) of the Social Security Act);

(ii) individuals who have attained the age of sixty and have completed thirty years of service;

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[2] As in original. Probably should be "mortgagees".

[1] P.L. 93-445, §101, amended the Railroad Retirement Act of 1937 in its entirety.

(iii) individuals who have attained the age of sixty-two and have completed less than thirty years of service, but the annuity of such individuals shall be reduced by 1/180 for each of the first 36 months that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that he or she is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue;

(iv) individuals who have a current connection with the railroad industry, whose permanent physical or mental condition is such as to be disabling for work in their regular occupation, and who (A) have completed twenty years of service or (B) have attained the age of sixty; and

(v) individuals whose permanent physical or mental condition is such that they are unable to engage in any regular employment.

(2) For the purposes of paragraph (iv) of subdivision (1), the Board, with the cooperation of employers and employees, shall secure the establishment of standards determining the physical and mental conditions which permanently disqualify employees for work in the several occupations in the railroad industry, and the Board, employers, and employees shall cooperate in the promotion of the greatest practicable degree of uniformity in the standards applied by the several employers. An individual's condition shall be deemed to be disabling for work in his regular occupation if he will have been disqualified by his employer for service in his regular occupation in accordance with the applicable standards so established; if the employee will not have been so disqualified by his employer, the Board shall determine whether his condition is disabling for work in his regular occupation in accordance with the standards generally established; and, if the employee's regular occupation is not one with respect to which standards will have been established, the standards relating to a reasonably comparable occupation shall be used. If there is no such comparable occupation, the Board shall determine whether the employee's condition is disabling for work in his regular occupation by determining whether under the practices generally prevailing in industries in which such occupation exists such condition is a permanent disqualification for work in such occupation. For purposes of this subdivision and paragraph (iv) of subdivision (1), an employee's "regular occupation" shall be deemed to be the occupation in which he will have been engaged in more calendar months than the calendar months in which he will have been engaged in any other occupation during the last preceding five calendar years, whether or not consecutive, in each of which years he will have earned wages or salary, except that, if an employee establishes that during the last fifteen consecutive calendar years he will have been engaged in another occupation in one-half or more of all the months in which he will have earned wages or salary, he may claim such other occupation as his regular occupation.

(3) Such satisfactory proof shall be made from time to time as prescribed by the Board, of the disability provided for in paragraph (iv) or (v) of subdivision (1) and of the continuance of such disability (according to the standards applied in the establishment of such disability) until the employee attains retirement age (as defined in section 216(l) of the Social Security Act). If the individual fails to comply with the requirements prescribed by the Board as to proof of the continuance of the disability until he attains retirement age (as defined in section 216(l) of the Social Security Act), his right to an annuity by reason of such disability shall, except for good cause shown to the Board, cease, but without prejudice to his rights to any subsequent annuity to which he may be entitled.

(b) An individual who—

(i) has attained age 60 and completed thirty years of service or attained age 65;

(ii) has completed twenty-five years of service;

(iii) is entitled to the payment of an annuity under subsection (a)(1);

(iv) had a current connection with the railroad industry at the time such annuity began to accrue; and

(v) has performed compensated service in at least one month prior to October 1, 1981;

shall, subject to the conditions set forth in subsections (e) and (h), be entitled to a supplemental annuity in the amount provided under section 3 of this Act: *Provided, however*, That in cases where an individual's annuity under subsection (a)(1) begins to accrue on other than the first day of the month, the amount of any supplemental annuity to which he is entitled for that month shall be reduced by one-thirtieth for each day with respect to which he is not entitled to an annuity under subsection (a)(1).

(c)(1) The spouse of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age of 60 and has completed thirty years of service or has attained the age of 62, and

(ii) such spouse (A) has attained retirement age (as defined in section 216(l) of the Social Security Act), or (B) has attained the age of 60 and such individual has completed thirty years of service, or (C), in the case of a wife, has in her care (individually or jointly with her husband) a child who meets the qualifications prescribed in paragraph (iii) of subsection (d)(1) (without regard to the provisions of clause (B) of such paragraph),

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a spouse's annuity, if he or she has filed application therefor, in the amount provided under section 4 of this Act.

(2) A spouse who would be entitled to an annuity under subdivision (1) or a divorced wife who would be entitled to an annuity under subdivision (4) if he or she had attained retirement age (as defined in section 216(l) of the Social Security Act) may elect upon or after attaining the age of 62 to receive such annuity, but the annuity in any such case shall be reduced by 1/144 for each of the first 36 months that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue and by 1/240 for each additional month that the spouse or divorced wife is under retirement age (as defined in section 216(l) of the Social Security Act) when the annuity begins to accrue, except that the annuity of a divorced wife who was previously entitled to a spouse annuity which was reduced under this subdivision shall be reduced by the same percentage as was applicable to the spouse annuity.

(3) For the purposes of this Act, the term "spouse" shall mean the wife or husband of an annuitant under subsection (a)(1) who (i) was married to such annuitant for a period of not less than one year immediately preceding the day on which the application for a spouse's annuity is filed, or in the month prior to his or her marriage to such annuitant was eligible for an annuity under paragraph (i) or (iv) of subsection (d)(1) or, on the basis of disability, under paragraph (iii) thereof, or is the parent of such annuitant's son or daughter; and (ii) in the case of a husband, was receiving at least one-half of his support from his wife at the time his wife's annuity under subsection (a)(1) began.

(4) The "divorced wife" (as defined in section 216(d) of the Social Security Act) of an individual, if—

(i) such individual (A) is entitled to an annuity under subsection (a)(1) and (B) has attained the age 62;

(ii) such divorced wife (A) has attained retirement age (as defined in section 216(l) of the Social Security Act[2] and (B) is not married; and

(iii) such divorced wife would have been entitled to a benefit under section 202(b) of the Social Security Act as the divorced wife of such individual if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act;

shall, subject to the conditions set forth in subsections (e), (f), and (h), be entitled to a divorced wife's annuity, if she has filed an application therefor, in the amount provided under section 4 of this Act.

(d)(1) The following described survivors of a deceased employee who will have completed ten years of service and will have had a current connection with the railroad industry at the time of his death shall, subject to the conditions set forth in subsections (g) and (h), be entitled to annuities, if they have filed application therefor, in the amounts provided under section 4 of this Act—

(i) a widow (as defined in section 216(c) and (k) of the Social Security Act) or widower (as defined in section 216(g) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) will have attained the age of sixty or (B) will have attained the age of fifty but will not have attained age sixty and is under a disability which began before the end of the period prescribed in subdivision (2), and who, in the case of a widower, was receiving at least one-half of his support from the deceased employee at the time of her death or at the time her annuity under subsection (a)(1) began;

(ii) a widow (as defined in section 216(c) and (k) of the Social Security Act) of such a deceased employee who has not remarried and who (A) is not entitled to an annuity under paragraph (i), and (B) at the time of filing an application for an annuity under this paragraph, will have in her care a child of such deceased employee, which child is entitled to an annuity under paragraph (iii) (other than an annuity payable to a child who has attained age 18 and is not under a disability);

(iii) a child (as defined in section 216(e) and (k) of the Social Security Act) of such a deceased employee who (A) will be less than eighteen years of age, or (B) will be less than nineteen years of age and a full-time elementary or secondary school student, or (C) will, without regard to his age, be under a disability which began before he attained age twenty-two or before the close of the eighty-fourth month following the month in which his most recent entitlement to an annuity under this paragraph terminated because he ceased to be under a disability, and who is unmarried and was dependent upon the employee at the time of the employee's death;

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[2] As in original; no closing parenthesis.

(iv) a parent (as defined in section 202(h)(3) of the Social Security Act) of such a deceased employee who (A) will have attained the age of sixty and (B) will have received at least one-half of his or her support from such deceased employee at the time of the employees' death and (C) will not have remarried after the employee's death: *Provided, however*, That no parent will be entitled to an annuity under this paragraph on the basis of the deceased employee's compensation and years of service in any case where such employee died leaving a widow or widower or a child who is, or who might in the future become, entitled to an annuity under this subsection, but neither this proviso nor clause (B) or (C) of this paragraph shall operate to deny any parent an annuity to the extent and in the amount of the benefit that such parent would have received under the Social Security Act if the service as an employee of the individual, with respect to which such parent would be eligible to receive an annuity under this Act except for this proviso and those clauses, were included in "employment" as defined in the Social Security Act; and

(v) The[3] widow (as defined in section 216(c) of the Social Security Act), who is married, or has been married after the death of the employee, the surviving divorced wife (as defined in section 216(d) of the Social Security Act), and a surviving divorced mother (as defined in section 216(d) of the Social Security Act) if such widow, surviving divorced wife, or surviving divorced mother would have been entitled to a benefit under section 202(e) or 202(g) of the Social Security Act as the widow, surviving divorced wife, or surviving divorced mother of the employee if all of his service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For the purpose of this paragraph, the reference in sections 202(e)(3) and 202(g)(3) of the Social Security Act to an individual entitled under section 202(f) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(i) of this Act and an individual entitled to an annuity under section 2(d)(1)(ii) of this Act, and the reference in section 202(e)(3) and section 202(g)(3) of the Social Security Act to an individual entitled under section 202(d) or section 202(h) of that Act shall include an individual entitled to an annuity under section 2(d)(1)(iii) or section 2(d)(1)(iv) of this Act, and the references in section 202(g)(3) of the Social Security Act to an individual entitled under section 202(a) or section 223(a) of that Act shall include an individual entitled to an annuity under section 2(a)(1) of this Act.

(2) The period referred to in clause (B) of subdivision (1)(i) is the period (i) beginning with the latest of (A) the month of the employee's death, (B) in the case of a widow, the last month for which she was entitled to an annuity under paragraph (ii) of subdivision (1) as the widow of the deceased employee, or (C) the month in which the widow's or widower's previous entitlement to an annuity as the widow or widower of the deceased employee terminated because her or his disability had ceased and (ii) ending with the month before the month in which she or he attains age sixty, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(3) For purposes of paragraph (i) or (iii) of subdivision (1), a widow, widower, or child shall be under a disability if her or his permanent physical or mental condition is such that she or he is unable to engage in any regular employment. The provisions of subsection (a)(3) of this section as to the proof of disability shall apply with regard to determinations with respect to disability under subdivision (1).

(4) In determining for purposes of this subsection and subdivision (3) of subsection (c) whether an applicant is the wife, husband, widow, widower, child, or parent of a deceased employee as claimed, the rules set forth in section 216(h) of the Social Security Act shall be applied deeming, for this purpose, individuals entitled to an annuity under subsection (c) to be entitled to benefits under subsection (b) or (c) of section 202 of the Social Security Act and individuals entitled to an annuity under paragraph (i) or (ii) of subsection (d)(1) to be entitled to a benefit under subsection (e), (f), or (g) of section 202 of the Social Security Act. For purposes of paragraph (iii) of subdivision (1), a child shall be deemed to have been dependent upon his parent employee if the conditions set forth in section 202(d)(3), (4), or (9) of the Social Security Act are fulfilled. The provisions of paragraph (7) of section 202(d) of the Social Security Act (defining the terms "full-time elementary or secondary school student" and "elementary or secondary school") shall be applied by the Board in the administration of this subsection as if the references therein to the Secretary were references to the

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[3] As in original. Probably should be "the".

Board. A child who attains age nineteen at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of paragraph (7) of section 202(d) of the Social Security Act and without the application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in section 202(d)(7)(c)(i)[4] of the Social Security Act) shall be deemed (for purposes of determining his continuing or initial entitlement to an annuity under this subsection) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(e)(1) No individual shall be entitled to an annuity under subsection (a)(1) until he shall have ceased to render compensated service to an employer as defined in section 1(a).

(2) An annuity under subsection (a)(1) shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer: *Provided, however*, That this requirement shall not apply to individuals mentioned in paragraphs (iv) and (v) of subsection (a)(1) prior to attaining retirement age (as defined in section 216(l) of the Social Security Act): *Provided further*, That, notwithstanding the provisions of the preceding proviso and of clause (i) of subsection (c)(1) of this section, an annuity shall be paid to the spouse of an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the preceding proviso: *And provided further*, That, notwithstanding the provisions of the first proviso of this subdivision and of clause (iii) of subsection (b)(1) of this section, a supplemental annuity shall be paid to an individual only if such individual shall have satisfied the requirements of this subdivision without regard to the first proviso thereof.

(3) No annuity under subsection (a)(1) or supplemental annuity under subsection (b)(1) shall be paid with respect to any month in which an individual in receipt of an annuity or supplemental annuity thereunder shall render compensated service to an employer. Individuals receiving annuities under subsection (a)(1) shall report to the Board immediately all such compensated service.

(4) No annuity under paragraph (iv) or (v) of subsection (a)(1) shall be paid to an individual with respect to any month in which the individual is under retirement age (as defined in section 216(l) of the Social Security Act) and is paid more than $400 in earnings (after deduction of disability related work expenses) from employment or self-employment of any form: *Provided, however*, That for purposes of this subdivision, if a payment in any one calendar month is for accruals in more than one calendar month, such payment shall be deemed to have been paid in each of the months in which accrued to the extent accrued in such month. Any such individual under the retirement age (as defined in section 216(l) of the Social Security Act) shall report to the Board any such payment of earnings for such employment or self-employment before receipt and acceptance of an annuity for the second month following the month of such payment. A deduction shall be imposed, with respect to any such individual who fails to make such report, in the annuity or annuities otherwise due the individual, in an amount equal to the amount of the annuity for each month in which he is paid such earnings in such employment or self-employment, except that the first deduction imposed pursuant to this sentence shall in no case exceed an amount equal to the amount of the annuity otherwise due for the first month with respect to which the deduction is imposed. If pursuant to the first sentence of this subdivision an annuity was not paid to an individual with respect to one or more months in any calendar year, and it is subsequently established that the total amount of such individual's earnings during such year as determined in accordance with that sentence (but exclusive of earnings for services described in subdivision (3)) did not exceed $4,800 (after deduction of disability related work expenses), the annuity with respect to such month or months, and any deduction imposed by reason of the failure to report earnings for such month or months under the third sentence of this subdivision, shall then be payable. If the total amount of such individual's earnings during such year (exclusive of earnings for services described in subdivision (3)) is in excess of $4,800 (after deduction of disability related work expenses), the number of months in such year with respect to which an annuity is not payable by reason of such first and third sentences shall not exceed one month for each $400 of such excess, treating the last $200 or more of such excess as $400; and if the amount of the annuity has changed during such year, any payments of annuities which become payable solely by reason of

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[4] As in original. Probably should be "202(d)(7)(C)(i)".

the limitations contained in this sentence shall be made first with respect to the month or months for which the annuity is larger.

(5) The annuity of a spouse or divorced wife under subsection (c) shall, with respect to any month, be subject to the same provisions of this subsection as the individual's annuity. In addition, the annuity of a spouse or divorced wife under subsection (c) shall not be payable for any month if the individual's annuity under subsection (a)(1) is not payable for such month by reason of the provisions of this subsection.

(f)(1) That portion of the individual's annuity as is computed under section 3(a) of this Act on the basis of (A) his compensation and years of service subsequent to December 31, 1974, and (B) his wages and self-employment income derived from employment and self-employment under the Social Security Act and that portion of the individual's annuity as is computed under section 3(h) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such annuity were a monthly insurance benefit under that Act: *Provided, however,* That the provisions of this subdivision shall be applicable to the annuity of an individual only if such individual would be fully insured under the Social Security Act on the basis of wages and self-employment income derived from employment and self-employment under that Act and on the basis of compensation derived from service as an employee after December 31, 1974, if such service as an employee had been included in the term "employment" as defined in that Act. Any person in receipt of an annuity subject to deduction under this subsection shall report to the Board the receipt of excess earnings as defined in paragraph (3) of section 203(f) of the Social Security Act.

(2) That portion of the spouse's or divorced wife's annuity under subsection (c) which is derived from the portion of the individual's annuity subject to deductions under subdivision (1) and that portion of the spouse's or divorced wife's annuity as is computed under section 4(e) of this Act shall be subject to deductions on account of work pursuant to the provisions of section 203 of the Social Security Act in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under that Act. In addition, such portion of the spouse's or divorced wife's annuity shall be subject to deductions if the individual's annuity is subject to deductions under subdivision (1) in the same manner as if such portion of such spouse's or divorced wife's annuity were a monthly insurance benefit under the Social Security Act.

(3) Deductions shall not be made pursuant to subdivision (1) from that portion of an individual's annuity as is computed under section 3(a) of this Act for any month in which the annuity of such individual is reduced pursuant to section 3(m) of this Act. This subdivision shall be disregarded in determining the applicability and amount of deductions in a spouse's annuity pursuant to subdivision (2) of this subsection.

(4) Deductions shall not be made pursuant to subdivision (2) from that portion of a spouse's annuity as is computed under section 4(a) of this Act for any month in which the annuity of such spouse is reduced due to entitlement to a benefit under title II of the Social Security Act.

(5) If an annuity begins to accrue on other than the first day of a month, subdivisions (1) and (2) of this subsection shall not apply in the year the annuity begins to accrue if the annuitant has no earnings in excess of the monthly exempt amount in such year after the annuity beginning date.

(6)(A) Except as provided in subparagraph (B)—

(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of $1 for each $2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of $1 for each $2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the date on which the annuity of such spouse under subsection (c)(1) began to accrue.

(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply.

(g)(1) No annuity shall be paid to a survivor under subsection (d) with respect to any month in which such survivor renders service for compensation as an employee of an employer. Survivors receiving annuities under subsection (d) shall report to the Board immediately all such service for compensation.

(2) Deductions, in amounts and at such time or times as the Board shall determine, shall be made from any payments to which a survivor is entitled under subsection (d) until the total of such deductions equals such survivor's annuity under that subsection for any month, if for such month such survivor would be charged with excess earnings under section 203(f) of the Social Security Act or, having engaged in any activity outside the United States, would be charged under such section 203(f) with any excess earnings derived from such activity if it had been an activity within the United States. For purposes of this subdivision the Board shall have the authority to take such actions and to make such determinations and such suspensions of payment of benefits in the manner and to the extent that the Secretary of Health, Education, and Welfare would be authorized to take or to make under section 203(h)(3) of the Social Security Act if the survivors were receiving the annuities to which this subdivision applies under section 202 of such Act: *Provided, however*, That in determining a survivor's excess earnings for a year for the purposes of this subdivision there shall not be included his income from employment or self-employment during months beginning with the month with respect to which he ceases to be qualified for an annuity. Survivors receiving annuities under subsection (d) shall report to the Board the receipt of excess earnings described in this subdivision.

(h)(2)[8] The supplemental annuity provided an individual by subsection (b) shall, with respect to any month, be reduced by the amount of the supplemental pension, attributable to the employer's contribution, that such individual is entitled to receive for that month under any other supplemental pension plan: *Provided, however*, That the maximum of such reduction shall be equal to the amount of the supplemental annuity less any amount by which the supplemental pension is reduced by reason of the supplemental annuity.

(3) If a spouse or divorced wife entitled to an annuity under subsection (c) or a survivor entitled to an annuity under subsection (d) for any month is also entitled to annuity under subsection (a)(1) for such month, the annuity under subsection (c) or (d) shall be reduced, but not below zero, by an amount equal to the annuity under subsection (a)(1): *Provided, however*, That the provisions of this subdivision shall not apply if either the spouse or survivor or the individual upon whose earnings record the spouse's or survivor's annuity under subsection (c) or (d) is based rendered service as an employee to an employer, or as an employee representative, prior to January 1, 1975.

(4) If an annuitant is entitled to more than one annuity under subsections (c) and (d) for a month, such annuitant shall be entitled to only the larger of such annuities for such month, except that, if such annuitant so elects, he shall instead be entitled to only the smaller of such annuities for such month.

COMPUTATION OF EMPLOYEE ANNUITIES

SEC. 3. [45 U.S.C. 231b] (a)(1) The annuity of an individual under section 2(a)(1) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the old-age insurance benefit or disability insurance benefit to which such individual would have been entitled under the Social Security Act if all of his or her service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, individuals entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act shall be deemed to be entitled to a disability insurance benefit under section 223 of the Social Security Act.

(3) In lieu of an annuity amount provided under subdivision (1), the annuity of an individual entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which begins to accrue before the individual attains age 62 shall be in an amount equal to—

(i) for each month prior to the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act as of the date on which such individual's annuity begins to accrue if such individual had attained age 62 on the first day of the month in which his or her annuity begins to accrue and if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act, using for purposes of this computation the number of benefit computation years applicable to a person born in the year in which such individual was born; and

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[8] As in original. P.L. 98-76, §414(a)(1), struck out paragraph (1) and §414(a)(2), inserted "(h)".

(ii) for months beginning with the first month throughout which the individual is age 62, the amount (after any reduction on account of age but before any deductions on account of work) of the old-age insurance benefit to which such individual would have been entitled under the Social Security Act if all of such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

* * * * * * *

(i)(1) The "years of service" of an individual shall include all his service subsequent to December 31, 1936.

(2) The "years of service" of an individual shall also include his voluntary or involuntary military service, within or without the United States, during any war service period: *Provided, however,* That such military service shall be included only if, prior to the beginning of his military service and in the same calendar year in which such military service began, or in the next preceding calendar year, the individual rendered service for compensation to an employer or to a person service to which is otherwise creditable under this Act, or lost time as an employee for which he received remuneration, or was serving as an employee representative: *Provided further,* That such military service shall be included only subject to and in accordance with the provisions of subdivisions (1) and (3) of this subsection in the same manner as though military service were service rendered as an employee: *And provided further,* That such military service rendered after December 1956 shall not be included with respect to any month if (A) any benefits are payable for that month under the Social Security Act on the basis of such individual's wages and self-employment income, (B) such military service was included in the computation of such benefits, and (C) the inclusion of such military service in the computation of such benefits resulted (for that month) in benefits not otherwise payable or in an increase in the benefits otherwise payable: *And provided further,* That an individual who entered military service prior to a war service period shall not be regarded as having been in military service in a war service period with respect to any part of the period for which he entered such military service.

(3) The "years of service" of an individual who was an employee on August 29, 1935, shall, if the total number of his "years of service" as determined under subdivisions (1) and (2) is less than thirty, also include his service prior to January 1, 1937, but not so as to make his total years of service exceed thirty: *Provided, however,* That with respect to any such individual who rendered service to any employer subsequent to December 31, 1936, and who on August 29, 1935, was not an employee of an employer conducting the principal part of its business in the United States, no greater proportion of his service rendered prior to January 1, 1937, shall be included in his "years of service" than the proportion which his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service subsequent to December 31, 1936, rendered anywhere to an employer conducting the principal part of its business in the United States or rendered in the United States to any other employer bears to his total compensation (without regard to any limitation on the amount of compensation otherwise provided in this Act) for service rendered anywhere to an employer subsequent to December 31, 1936. Where the "years of service" include only part of the service prior to January 1, 1937, the part included shall be taken in reverse order beginning with the last calendar month of such service.

(4) Where for any calendar year after 1984 an individual has performed service for compensation in less than twelve months of the calendar year but has received compensation in excess of an amount determined by multiplying the number of months in the year in which such individual performed service for compensation by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, the individual shall be deemed to have rendered service for compensation in that number of months in the calendar year, but not to exceed twelve, which is equal to the quotient of the amount of such individual's compensation for the calendar year divided by an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, with any remainder produced by this computation increasing the quotient by one, but an individual shall not be deemed under this subdivision to have rendered service for compensation in any month in which such individual was neither in an employment relation to one or more employers nor an employee representative.

(j) The "average monthly compensation" shall be computed in the manner specified in section 3(b) of this Act, except (1) that with respect to service prior to January 1, 1937, the monthly compensation shall be the average compensation paid to an employee with respect to calendar months included in his years of service in the years

1924-1931, and (2) the amount of compensation paid or attributable as paid to him with respect to each month of service before September 1941 as a station employee whose duties consisted of or included the carrying of passengers' hand baggage and otherwise assisting passengers at passenger stations and whose remuneration for service to the employer was, in whole or in substantial part, in the forms of tips, shall be the monthly average of the compensation paid to him as a station employee in his months of service in the period September 1940 through August 1941: *Provided, however*, That where service in the period 1924 through 1931 in the one case, or in the period September 1940 through August 1941 in the other case, is, in the judgment of the Board, insufficient to constitute a fair and equitable basis for determing[6] the amount of compensation paid or attributable as paid to him in each month of service before 1937, or September 1941, respectively, the Board shall determine the amount of such compensation for each such month in such manner as in its judgment shall be fair and equitable. In computing the monthly compensation, no part of any month's compensation in excess of $300 for any month before July 1, 1954, or in excess of $350 for any month after June 30, 1954, and before June 1, 1959, or in excess of $400 for any month after May 31, 1959, and before November 1, 1963, or in excess of $450 for any month after October 31, 1963, and before October 1, 1965, or in excess of (i) $450, or (ii) an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954, whichever is greater, for any month after September 30, 1965, shall be recognized. If for any calendar year after 1984 an employee has received compensation of less than one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954 in one or more months of the calendar year, the total compensation paid such employee in the calendar year (without regard to the limitation on the amount of compensation provided in the preceding sentence) shall be deemed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in the service of one or more employers for compensation or will have performed service for compensation as an employee representative, but this sentence shall not operate to increase the employee's compensation for any month above an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 of the Internal Revenue Code of 1954. If the employee earned compensation in service after June 30, 1937, and after the last day of the calendar year in which he attained age sixty-five, such compensation and service shall be disregarded in computing the average monthly compensation if the result of taking such compensation into account in such computation would be to diminish his annuity. Where an employee claims credit for months of service rendered within two years prior to his retirement from the service of an employer, with respect to which the employer's return pursuant to section 9 of this Act has not been entered on the records of the Board before the employee's annuity could otherwise be certified for payment, the Board may, in its discretion (subject to subsequent adjustment at the request of the employee) include such months in the computation of the annuity without further verification and may consider the compensation for such months to be the average of the compensation for months in the last period for which the employer has filed a return of the compensation of such employee and such return has been entered on the records of the Board.

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COMPUTATION OF SPOUSE AND SURVIVOR ANNUITIES

SEC. 4. [45 U.S.C. 231c] (a)(1) The annuity of a spouse or divorced wife of an individual under section 2(c) of this Act shall be in an amount equal to the amount (before any reduction on account of age and before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse or divorced wife would have been entitled under the Social Security Act if such individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(2) For purposes of this subsection, if an individual is entitled to an annuity under paragraph (ii) of section 2(a)(1) of this Act which did not begin to accrue before such individual attained age 62, the spouse of such individual entitled to an annuity under clause (B) of paragraph (ii) of section 2(c)(1) of this Act shall be deemed to have attained retirement age (as defined in section 216(l) of the Social Security Act[7].

(3) In the case of an individual entitled to an annuity under section 2(a)(1)(ii) of this Act which began to accrue before such individual attained age 62, the annuity of the

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[6] As in original. Possibly should be "determining".

[7] As in original; no closing parenthesis.

spouse of such individual under section 2(c) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to—

(i) for each month prior to the first month throughout which both the individual and the spouse are age 62, 50 per centum of that portion of the individual's annuity as is, or was prior to such individual's attaining age 62, computed under section 3(a)(3)(i) of this Act, reduced to the same extent such amount would be reduced under section 202(b)(4) of the Social Security Act (in the case of a wife) or under section 202(c)(2) of the Social Security Act (in the case of a husband) as if such amount were a wife's insurance benefit or a husband's insurance benefit, respectively, under such Act; and

(ii) for months beginning with the first month throughout which both the individual and the spouse are age 62, the amount (after any reduction on account of age based on the spouse's age at the time the amount under this paragraph first becomes payable but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act.

(4) In the case of an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act, the annuity of the spouse of such individual entitled to an annuity under section 2(c)(1)(ii)(B) of this Act shall, in lieu of an annuity amount provided under subdivision (1), be in an amount equal to the amount (after any reduction on account of age but before any deductions on account of work) of the wife's insurance benefit or the husband's insurance benefit to which such spouse would have been entitled under the Social Security Act if the individual's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. For purposes of this subdivision, spouses who have not attained age 62 shall be deemed to have attained age 62.

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(f)(1) The annuity of a survivor of a deceased employee under section 2(d) of this Act shall be in an amount equal to the amount (before any deductions on account of work) of the widow's insurance benefit, widower's insurance benefit, mother's insurance benefit, parent's insurance benefit, or child's insurance benefit, whichever is applicable, to which he or she would have been entitled under the Social Security Act if such deceased employee's service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act. In the case of a widow or widower who is entitled to an annuity under section 2(d) of this Act solely on the basis of railroad service which was performed prior to January 1, 1937, the amount provided under this section with respect to any month shall not be less than the first amount appearing in column IV of the table appearing in section 215(a) of the Social Security Act as in effect on December 31, 1974, after reduction in accordance with the provisions of section 202(k) and 202(q) of that Act in the same manner as would be applicable to a widow's insurance benefit or widower's insurance benefit payable under section 202(e) or 202(f) of that Act.

(2) For purposes of this subsection—

(i) a widow or widower or a parent who is entitled to an annuity based on age under section 2(d)(1) of this Act and who has not attained age 62 shall be deemed to be age 62: *Provided, however,* That the provisions of this paragraph shall not apply in the case of a widow or widower who was entitled to an annuity under section 2(d)(1) on the basis of disability for the month before the month in which he or she attained age 60,

(ii) a widow or widower or a child who is entitled to an annuity under section 2(d)(1) of this Act on the basis of disability shall be deemed to be entitled to a widow's insurance benefit, a widower's insurance benefit, or a child's insurance benefit under the Social Security Act on the basis of disability, and

(iii) The[*] provisions of paragraphs (i) and (ii) of this subdivision shall not apply to the annuity of a widow, surviving divorced wife, or surviving divorced mother who is entitled to such annuity on the basis of the provisions of section 2(d)(1)(v) of this Act.

(3) The annuity amount provided to a widow or widower under last sentence of subdivision (1) shall be increased by the same percentage or percentages as insurance benefits payable under section 202 of the Social Security Act are increased after the date on which such annuity begins to accrue.

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[*] As in original. Probably should be "the".

LUMP-SUM PAYMENTS

SEC. 6. [45 U.S.C. 231e]

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(b)(1) Upon the death of an individual who will have completed ten years of service prior to January 1, 1975, and will have had a current connection with the railroad industry at the time of his death, a lump-sum payment shall be made in accordance with the provisions of section 5(f)(1) of the Railroad Retirement Act of 1937 as in effect on December 31, 1974, in an amount, if any, which would have been payable under such section 5(f)(1) on the basis of (A) the individual's compensation after December 31, 1936, and prior to January 1, 1975, and (B) the individual's wages (as defined in section 209 of the Social Security Act) prior to January 1, 1975. Any lump sum payable under this subdivision shall be in an amount computed as if the individual had died on January 1, 1975. No lump sum shall be payable under this subdivision if the employee died leaving a surviving divorced wife who would on proper application therefore[9] be entitled to receive an annuity under section 2(d) of this Act for the month in which the employee's death occurred.

(2) Upon the death of an individual who will not have completed ten years of service prior to January 1, 1975, but who (i) will have completed ten years of service at the time of his death, (ii) will have had a current connection with the railroad industry at the time of his death, and (iii) will have died leaving no widow, surviving divorced wife, widower, child, or parent who would on proper application therefor be entitled to receive an annuity under section 2(d) of this Act for the month in which such death occurred, a lump-sum death payment shall be made in accordance with the provisions of section 202(i) of the Social Security Act in an amount equal to the amount which would have been payable under such section 202(i) if such individual's service as an employee after December 31, 1936, were included in the term "employment" as defined in that Act. If a lump sum would be payable to a widow or widower under this subdivision except for the fact that a survivor will have been entitled to receive an annuity for the month in which the individual will have died, but within one year after the individual's death there will not have accrued to survivors of the individual, by reason of his death, annuities which, after all deductions pursuant to sections 2(g) and 2(h) of this Act, are equal to such lump sum, a payment equal to the amount by which such lump sum exceeds such annuities so accrued after such deductions shall then nevertheless be made under this subdivision to the widow or widower to whom a lump sum would have been payable under this subdivision except for the fact that a monthly benefit under section 2(d) of this Act was payable for the month in which the individual died, if such widow or widower will not have died before receiving payment of such lump sum.

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POWERS AND DUTIES OF THE BOARD

SEC. 7. [45 U.S.C. 231f]

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(b) * * *

(7) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare shall furnish the Board certified reports of wages, self-employment income, and periods of service and of other records in his possession, or which he may secure, pertinent to the administration of this Act, the Railroad Unemployment Insurance Act, the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act..[10] The Board shall furnish the Secretary of Health, Education, and Welfare certified reports of records of compensation and periods of service reported to it pursuant to section 9 of this Act, of determinations under section 2 of this Act, and of other records in its possession, or which it may secure, pertinent to subsection (c) of this section or to the administration of the Social Security Act as affected by section 18 of this Act. Such certified reports shall be conclusive in adjudication as to the matters covered therein: *Provided, however,* That if the Board or the Secretary of Health, Education, and Welfare receives evidence inconsistent with a certified report and the application involved is still in course of adjudication or otherwise open for such evidence such recertification of such report shall be made as, in the judgment of the Board or the Secretary of Health, Education, and Welfare, whichever made the original certification, the evidence warrants. Such recertification and any subsequent recertification shall be

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[9] As in original. Should be "therefor".

[10] As in original. One period should be stricken.

treated in the same manner and be subject to the same conditions as an original certification.

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(d)(1) The Board shall, for purposes of this subsection, have the same authority to determine the rights of individuals described in subdivision (2) to have payments made on their behalf for hospital insurance benefits consisting of inpatient hospital services, posthospital extended care services, home health services, hospice care, and outpatient hospital diagnostic services (all hereinafter referred to as "services") under section 226, and parts A and C of title XVIII, of the Social Security Act as the Secretary of Health, Education, and Welfare has under such section and such parts with respect to individuals to whom such sections and such parts apply. For purposes of section 8, a determination with respect to the rights of an individual under this subsection shall, except in the case of a provider of services, be considered to be a decision with respect to an annuity.

(2) Except as otherwise provided in this subsection, every person who—

(i) has attained age 65 and (A) is entitled to an annuity under this Act or (B) would be entitled to such an annuity had he ceased compensated service and, in the case of a spouse or divorced wife, had such spouse's husband or wife ceased compensated service or (C) bears a relationship to an employee which, by reason of section 3(f)(3) of this Act, has been, or would be, taken into account in calculating the amount of the annuity of such employee; or

(ii) has not attained age 65 and (A) has been entitled to an annuity under section 2 of this Act, or under the Railroad Retirement Act of 1937 and section 2 of this Act, or could have been includible in the computation of an annuity under section 3(f)(3) of this Act, for not less than 24 months and (B) could have been entitled for 24 calendar months, and could currently be entitled, to monthly insurance benefits under section 223 of the Social Security Act or under section 202 of that Act on the basis of disability if service as an employee after December 31, 1936, had been included in the term "employment" as defined in that Act and if an application for disability benefits had been filed,

shall be certified to the Secretary of Health, Education, and Welfare as a qualified railroad retirement beneficiary under section 226 of the Social Security Act.

(3) If an individual entitled to an annuity under paragraph (iv) or (v) of section 2(a)(1) of this Act would have been insured for disability insurance benefits as determined under section 223(c)(1) of the Social Security Act at the time such annuity began, he shall be deemed, solely for purposes of paragraph (ii) of subdivision (2), to be entitled to a disability insurance benefit under section 223 of the Social Security Act for each month, and beginning with the first month, in which he would meet the requirements for entitlement to such a benefit, other than the requirement of being insured for disability insurance benefits, if service as an employee after December 31, 1936, had been included in the term "employment" as defined in the Social Security Act and if an application for disability benefits had been filed.

(4) The rights of individuals described in subdivision (2) of this subsection to have payment made on their behalf for the services referred to in subdivision (1) but provided in Canada shall be the same as those of individuals to whom section 226 and part A of title XVIII of the Social Security Act apply, and this subdivision shall be administered by the Board as if the provisions of section 226 and part A of title XVIII of the Social Security Act were applicable, as if references to the Secretary of Health, Education, and Welfare were to the Board, as if references to the Federal Hospital Insurance Trust Fund were to the Railroad Retirement Account, as if references to the United States or a State included Canada or a subdivision thereof, and as if the provisions of sections 1862(a)(4), 1863, 1864, 1868, 1869, 1874(b), and 1875 were not included in such title. The payments for services herein provided for in Canada shall be made from the Railroad Retirement Account (in accordance with, and subject to, the conditions applicable under section 7(b), in making payment of other benefits) to the hospital, extended care facility, or home health agency providing such services in Canada to individuals to whom subdivision (2) of this subsection applies, but only to the extent that the amount of payments for services otherwise hereunder provided for an individual exceeds the amount payable for like services provided pursuant to the law in effect in the place in Canada where such services are furnished. For the purposes of section 10 of this Act, any overpayment under this subdivision shall be treated as if it were an overpayment of an annuity.

(5) The Board and the Secretary of Health, Education, and Welfare shall furnish each other with such information, records, and documents as may be considered necessary to the administration of this subsection or section 226, and part A of title XVIII, of the Social Security Act.

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CREDITING SERVICE UNDER THE SOCIAL SECURITY ACT

SEC. 18. [45 U.S.C. 231q]

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(2) For the purpose of determining (i) monthly insurance benefits under the Social Security Act to an employee who will have completed less than ten years of service and to others deriving from him or her during his or her life and (ii) monthly insurance benefits and lump-sum death benefits under such Act with respect to the death of an employee who (A) will have completed less than ten years of service or (B) will have completed ten or more years of service but will not have had a current connection with the railroad industry at the time of his death, and for the purposes of section 203 and section 216(i) of that Act, section 210(a)(9) of the Social Security Act and subdivision (1) of this section shall not operate to exclude from "employment" under the Social Security Act service which would otherwise be included in such "employment" but for such sections. For such purpose, compensation paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee will have been in service as an employee. In the application of the Social Security Act pursuant to this subdivision to service as an employee, all service as defined in section 1(d) of this Act shall be deemed to have been performed within the United States.

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[*Internal References.*—S.S. Act §§202(t); 205(c) and (i); 215(a) and (d); and 228(h) cite the Railroad Retirement Act of 1937; §§202(l) and (t); 205(c), (i), and (o); 210(l); 215(a) and (d); 216(b), (c), (f), and (g); 226(b), (d), and (f); 226A(a); 1839(f); 1840(b); 1842(g); 1843(b) and (d); 1870(b); and 1874(a) cite the Railroad Retirement Act of 1974; and S.S. Act §§202(t) and 228(h) have footnotes referring to P.L. 75-162.]

P.L. 75-353, Approved August 24, 1937 (50 Stat. 754)
Act of August 24, 1937
[Unemployment Compensation]

AN ACT

To make available to each State which enacted in 1937 an approved unemployment-compensation law a portion of the proceeds from the Federal employers' tax in such State for the year 1936.

[42 U.S.C. 1104 note] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby authorized to be appropriated for payment to the unemployment fund of each State or Territory which was not certified by the Social Security Board under section 903 of the Social Security Act on December 31, 1936, but which enacted in the year 1937 an unemployment-compensation law approved by the Social Security Board under such section, an amount equal to 90 per centum of the proceeds of the tax paid on or before January 31, 1938, with respect to employment in such State or Territory during the calendar year 1936 under title IX of such Act. Out of the sums appropriated therefor, the Secretary of the Treasury shall pay such amount, through the Division of Disbursement of the Treasury Department, to each such State unemployment fund. The terms used in this Act shall have the same meaning as identical terms in title IX of the Social Security Act.

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[*Internal Reference.*—S.S. Act §904(g) cites the Act of August 24, 1937.]

P.L. 75-412, Approved September 1, 1937 (50 Stat. 888)
United States Housing Act of 1937[1]

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SEC. 3. [42 U.S.C. 1437a]

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[1] P.L. 93-383, §201(a), amended the United States Housing Act of 1937 in its entirety.

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(b) When used in this Act:

(1) The term "low-income housing[2]" means decent, safe, and sanitary dwellings assisted under this chapter. The term "public housing" means low-income housing[3], and all necessary appurtenances thereto, assisted under this chapter other than under section 1437f of this title. When used in reference to public housing, the term "low-income housing[4] project" or "project" means (A) housing developed, acquired, or assisted by a public housing agency under this chapter, and (B) the improvement of any such housing.

(2) The term "low-income families[5]" means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. The term "very low-income families" means low-income families[6] whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes. Such ceilings shall be established in consultation with the Secretary of Agriculture for any rural area, as defined in section 520 of the Housing Act of 1949, taking into account the subsidy characteristics and types of programs to which such ceilings apply. In determining median incomes (of persons, families, or households) for an area or establishing any ceilings or limits based on income under this Act, the Secretary shall determine or establish area median incomes and income ceilings and limits for Westchester County, in the State of New York, as if such county were an area not contained within the metropolitan statistical area in which it is located.[7] In determining such area median incomes or establishing such income ceilings or limits for the portion of such metropolitan statistical area that does not include Westchester County, the Secretary shall determine or establish area median incomes and income ceilings and limits as if such portion included Westchester County.[8]

(3) The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age, is under a disability as defined in section 423 of this title, has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(7)), or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family, and (D) and any other single persons. In no event may any single person under clause (D) be provided a housing unit assisted under this Act of 2 bedrooms or more.[9] [10] In determining priority for admission to housing under this chapter, the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under clause (D). The term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which is expected to be of long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this subsection, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with one or more persons determined under regulations of the Secretary to be essential to their care or well being.[11] In determining priority for admission to public

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[2] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

[3] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

[4] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

[5] P.L. 101-625, §572(1), struck out "lower income families" and substituted "low-income families".

[6] P.L. 101-625, §572(1), struck out "lower income families" and substituted "low-income families".

[7] P.L. 101-625, §574, added this sentence.

[8] P.L. 101-625, §574, added this sentence.

[9] P.L. 101-625, §573(a)(1), struck out "(D) other single persons in circumstances described in regulations of the Secretary." and substituted "(D) and any other single persons. In no event may any single person under clause (D) be provided a housing unit assisted under this Act of 2 bedrooms or more.".

[10] P.L. 101-625, §573(a)(2), struck out "In no event shall more than 15 per centum of the units under the jurisdiction of any public housing agency be occupied by single persons under clause (D).".

[11] P.L. 101-625, §573(a)(2), struck out "The Secretary may increase the limitation described in the second sentence of this paragraph to not more than 30 per centum if, following consultation with the public housing agency

housing projects designed for elderly families, the public housing agency shall give preference to such families. When the public housing agency determines (in accordance with regulations of the Secretary) that there are insufficient numbers of elderly families to fill all the units in such a project, the agency may give preference to families in which the head of household (or spouse) is at least 50 years of age but below the age of 62 before those in which the head of household and spouse, if any, are below the age of 50. The temporary absence of a child from the home due to placement in foster care shall not be considered in considering family composition and family size.[12]

(4) The term "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family may not be considered as income under this paragraph[13].

(5) The term "adjusted income" means the income which remains after excluding—

(A) $550[14] for each member of the family residing in the household (other than the head of the household or his spouse) who is under 18 years of age or who is 18 years of age or older and is disabled or handicapped or a full-time student;

(B) $400 for any elderly family;

(C) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any [15] family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed;[16]

(D)(i) child care expenses to the extent necessary to enable another member of the family to be employed or to further his or her education; or (ii) excessive travel expenses, not to exceed $25 per family per week, for employment or education related travel, except that this clause shall apply only to families assisted by Indian housing authorities;[17]

(E) 10 percent of the earned income of the family; and[18]

(F) any payment made by a member of the family for the support and maintenance of any child, spouse, or former spouse who does not reside in the household, except that the amount excluded under this subparagraph shall not exceed the lesser of (i) the amount that such family member has a legal obligation to pay; or (ii) $550 for each individual for whom such payment is made.[19]

(6) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing[20]. The term includes any Indian housing authority.

(7) The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and Indian tribes.

(8) The term "Secretary" means the Secretary of Housing and Urban Development.

(9) The term "Indian" means any person recognized as being an Indian or Alaska Native by an Indian tribe, the Federal Government, or any State.

(10) The term "Indian area" means the area within which an Indian housing authority is authorized to provide low-income housing[21].

(11) The term "Indian housing authority" means any entity that—

(A) is authorized to engage in or assist in the development or operation of low-income housing[22] for Indians; and

(B) is established—

(i) by exercise of the power of self-government of an Indian tribe independent of State law; or

(ii) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

(12) The term "Indian tribe" means any tribe, band, pueblo, group, community, or nation of Indians or Alaska Natives.

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involved, the Secretary determines that the dwelling units involved are neither being occupied, nor are likely to be occupied within the next 12 months, by families or persons described in clauses (A), (B), and (C), due to the condition or location of such dwelling units, and that such dwelling units may be occupied if made available to single persons described in clause (D).".

[12] P.L. 101-625, §574, added this sentence.

[13] P.L. 101-625, §573(b), inserted ", except that any amounts not actually received by the family may not be considered as income under this paragraph".

[14] P.L. 101-625, §573(c)(1), struck out "$480" and substituted "$550".

[15] P.L. 101-625, §573(c)(2)(A), struck out "elderly".

[16] P.L. 101-625, §573(c)(2)(B), struck out "and".

[17] P.L. 101-625, §573(c)(3)(A), struck out the period and substituted a semicolon.

[18] P.L. 101-625, §573(c)(3)(B), added subparagraph (E).

[19] P.L. 101-625, §573(c)(3)(B), added subparagraph (F).

[20] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

[21] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

[22] P.L. 101-625, §572(2), struck out "lower income housing" and substituted "low-income housing".

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SEC. 8. [42 U.S.C. 1437f]

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(j)(1) The Secretary may enter into contracts to make assistance payments under this subsection to assist low-income families[23] by making rental assistance payments on behalf of any such family which utilizes a manufactured home as its principal place of residence. Such payments may be made with respect to the rental of the real property on which there is located a manufactured home which is owned by any such family or with respect to the rental by such family of a manufactured home and the real property on which it is located. In carrying out this subsection, the Secretary may—

(A) enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make such assistance payments to the owners of such real property, or

(B) enter into such contracts directly with the owners of such real property.

(2)(A) A contract entered into pursuant to this paragraph shall establish the maximum monthly rent (including maintenance and management charges) which the owner is entitled to receive for the space on which a manufactured home is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of real property suitable for occupancy by families assisted under this paragraph.

(B) The amount of any monthly assistance payment with respect to any family which rents real property which is assisted under this paragraph, and on which is located a manufactured home which is owned by such family shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—

(i) the monthly payment made by such family to amortize the cost of purchasing the manufactured home;

(ii) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(iii) the maximum monthly rent permitted with respect to the real property which is rented by such family for the purpose of locating its manufactured home;

except that in no case may such assistance exceed the total amount of such maximum monthly rent.

(3)(A) Contracts entered into pursuant to this paragraph shall establish the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of a manufactured home and the real property on which it is located suitable for occupancy by families assisted under this paragraph, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent.

(B) The amount of any monthly assistance payment with respect to any family which rents a manufactured home and the real property on which it is located and which is assisted under this paragraph shall be the difference between the rent the family is required to pay under section 3(a) of this Act and the sum of—

(i) the monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(ii) the maximum monthly rent permitted with respect to the manufactured home and the real property on which it is located.

(4) The provisions of subsection (c)(2) of this section shall apply to the adjustments of maximum monthly rents under this subsection.

(5) Each contract entered into under this subsection shall be for a term of not less than one month and not more than 180 months, except that in any case in which the manufactured home park is substantially rehabilitated or newly constructed, such term may not be less than 240 months, nor more than the maximum term for a manufactured home loan permitted under section 2(b) of the National Housing Act.

(6) The Secretary may carry out this subsection without regard to whether the manufactured home park is existing, substantially rehabilitated, or newly constructed.

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[23] P.L. 101-625, §572(1), struck out "lower income families" and substituted "low-income families".

(7) In the case of any substantially rehabilitated or newly constructed manufactured home park containing spaces with respect to which assistance is made under this subsection, the principal amount of the mortgage attributable to the rental spaces within the park may not exceed an amount established by the Secretary which is equal to or less than the limitation for manufactured home parks described in section 207(c)(3) of the National Housing Act, and the Secretary may increase such limitation in high cost areas in the manner described in such section.

(8) The Secretary may prescribe other terms and conditions which are necessary for the purpose of carrying out the provisions of this subsection and which are consistent with the purposes of this subsection.

(k) The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act, the Food Stamp Act of 1977, or title 38, United States Code. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

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SEC. 9. [42 U.S.C. 1437g]

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(b) The aggregate rentals required to be paid in any year by families residing in the dwelling units administered by a public housing agency receiving annual contributions under this section shall not be less than an amount equal to one-fifth of the sum of the incomes of all such families.

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[*Internal References.*—S.S. Act §§303(i) and 1612(b) cite the United States Housing Act of 1937 and S.S. Act §§1612(b) and 1613(a) catchlines have footnotes referring to P.L. 75-412.]

P.L. 75-717, Approved June 25, 1938 (52 Stat. 1040)

Federal Food, Drug, and Cosmetic Act

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NEW DRUGS

SEC. 505. [21 U.S.C. 355]

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(e) The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) the patent information prescribed by subsection (c) was not filed within thirty days after the receipt of written notice from the Secretary specifying the failure to file such information; or (5) that the application contains any untrue statement of a material fact: *Provided,* That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application submitted under subsection (b) or (j) with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (k) or to comply with the notice requirements of section 510(k)(2), or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

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[*Internal Reference.*—S.S. Act §1862(c) cites the Federal Food Drug, and Cosmetic Act.]

P.L. 75-722, Approved June 25, 1938 (52 Stat. 1094)
Railroad Unemployment Insurance Act

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RAILROAD UNEMPLOYMENT INSURANCE ADMINISTRATION FUND

SEC. 11. [45 U.S.C. 361]

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(b) In addition to the other moneys herein provided for expenses necessary or incidental to administering this Act, there is hereby appropriated to the fund such amount as the Secretary of the Treasury and the Board shall jointly estimate to have been collected or to be collectible with respect to the calendar years 1936, 1937, 1938, and 1939, from employers subject to this Act, under title IX of the Social Security Act, less such amount as the Secretary of the Treasury and the Board shall jointly estimate will be appropriated or has been appropriated to States or Territories pursuant to the Act of Congress approved August 24, 1937 (Public[1], Numbered 353, Seventy-fifth Congress), as proceeds of taxes paid by employers pursuant to title IX of the Social Security Act.

Until the amount appropriated by this subsection is credited to the fund, the Secretary of the Treasury is hereby directed to advance to the credit of the fund such sums, but not more than $2,000,000, as the Board requests for the purpose of financing the costs of administering this Act. Such advance shall be repaid from the fund at such time after the amount appropriated by this subsection is credited to the fund as the Board by agreement with the Secretary of the Treasury may determine, but not later than January 1, 1940.

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[*Internal Reference.*—S.S. Act §904(g) cites the Railroad Unemployment Insurance Act.]

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[1] As in original. Possibly should be "Public Law".

P.L. 78-410, Approved July 1, 1944 (58 Stat. 682)
Public Health Service Act

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GENERAL AUTHORITY RESPECTING RESEARCH, EVALUATIONS, AND DEMONSTRATIONS IN HEALTH STATISTICS, HEALTH SERVICES, AND HEALTH CARE TECHNOLOGY ASSESSMENT

SEC. 304. [42 U.S.C. 242b]

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(d)(1) The Secretary, with the advice and assistance of the National Academy of Sciences (acting through the Institute of Medicine and other appropriate units), shall, in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 308(i)(2), an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary shall, to the extent feasible—

(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

(B) identify each such disease and adverse effect on humans and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

(C) identify (on a national, regional, or other geographical basis) the source or sources of such pollutants and conditions and estimate the portion of each pollutant and the extent of each condition which can be traced to a specific type of source;

(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon tne incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

* * * * * * *

(4) For purposes of paragraph (1), the term "health costs of pollution and other environmental conditions" means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such diseases and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs.

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NATIONAL CENTER FOR HEALTH STATISTICS

SEC. 306. [42 U.S.C. 242k]

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(e) For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

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GRANTS FOR COMPREHENSIVE HEALTH PLANNING AND PUBLIC HEALTH SERVICES

Grants to States for Comprehensive State Health Planning

SEC. 314. [42 U.S.C. 246] (a)(1) AUTHORIZATION.—In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

(2) STATE PLANS FOR COMPREHENSIVE STATE HEALTH PLANNING.—In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Veterans' Administration, the individual whom the Administrator of Veterans' Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Administration which are located in such State) and nongovernmental organizations and groups concerned with health (including representation of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F)[1] provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

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[1] Sec. 208(a)(3) of P.L. 91-648 (42 U.S.C. 4728) transferred to the U.S. Civil Service Commission all functions, powers, and duties of the Secretary under any law applicable to a grant program which requires the establishment and maintenance of personnel standards on a merit basis with respect to the program.

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) **State allotments.**—From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) **Payments to states.**—From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The "Federal share" for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

Project Grants for Areawide Health Planning

(b)(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a), project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

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Sec. 317A. [42 U.S.C. 247b-1] LEAD POISONING PREVENTION.

(a) Grants to States.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States and agencies of units of local governments for the initiation and expansion of community programs designed to (1) screen infants and children for elevated blood lead levels, (2) assure referral for treatment of, and environmental intervention for, infants and children with such blood lead levels, and (3) provide education about childhood lead poisoning. In making grants under this paragraph, the Secretary shall give priority to applications for programs which will serve areas with a high incidence of elevated blood lead levels in infants and children.

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(d) Coordination.—No grant may be made under subsection (a) unless the Secretary determines that there will be coordination between the recipient of the grant and activities within the State in which the grantee is located under titles V and XIX of the Social Security Act relating to lead poisoning prevention.

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Part C—Hospitals, Medi[illegible] Examinations, and Medical Care

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MIGRANT HEALTH

Sec. 329. [42 U.S.C. 254b] (a) For purposes of this section:

(1) The term "migrant health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(A) primary health services,

(B) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(C) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(D) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(E) as may be appropriate for particular centers (as determined by the centers), infectious and parasitic disease screening and control,

(F) as may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure,

(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals,

(H) patient case management services (including outreach, counseling, referral, and follow-up services),

for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves (referred to in this section as a "catchment area") and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves.

(2) The term "migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last twenty-four months, and who establishes for the purposes of such employment a temporary abode.

(3) The term "seasonal agricultural workers[2]" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term "agriculture" means farming in all its branches, including—

(A) cultivation and tillage of the soil,

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

(5) The term "high impact area" means a health service area or other area which has not less than four thousand migratory agricultural workers and seasonal agricultural workers residing within its boundaries for more than two months in any calendar year. In computing the number of workers residing in an area, there shall be included as workers the members of the families of such workers.

(6) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(7) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

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[2] As in original. Possibly should be "worker".

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and

(M) other services appropriate to meet the health needs of the population served by the migrant health center involved.

(b)(1) The Secretary shall assign to high impact areas and any other areas (where appropriate) priorities for the provision of assistance under this section to projects and programs in such areas. The highest priorities for such assistance shall be assigned to areas where the Secretary determines the greatest need exists.

(2) No application for a grant under subsection (c) or (d) for a project in an area which has no migratory agricultural workers may be approved unless grants have been provided for all approved applications under such subsections for projects in areas with migratory agricultural workers.

(c)(1)(A) The Secretary may, in accordance with the priorities assigned under subsection (b)(1), make grants to public and nonprofit private entities for projects to plan and develop migrant health centers which will serve migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in high impact areas. A project for which a grant may be made under this subparagraph may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of providing training related to the management of migrant health center programs, and shall include—

(i) an assessment of the need that the workers (and the members of the families of such workers) proposed to be served by the migrant health center for which the project is undertaken have for primary health services, supplemental health services, and environmental health services;

(ii) the design of a migrant health center program for such workers and the members of their families, based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project.

(B) The Secretary may make grants to or enter into contracts with public and nonprofit private entities for projects to plan and develop programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to the management of programs assisted under this subparagraph.

(2) Not more than two grants may be made under paragraph (1)(A) for the same project, and if a grant or contract is made or entered into under paragraph (1)(B) for a project, no other grant or contract under that paragraph may be made or entered into for the project.

(3) The amount of any grant made under paragraph (1) for any project shall be determined by the Secretary.

(d)(1)(A)(i) The Secretary may, in accordance with priorities assigned under subsection (b)(1), make grants for the costs of operation of public and nonprofit private migrant health centers in high impact areas.

(ii) If the Secretary makes a determination that an area is a high impact area, the Secretary may alter the determination only after providing to the grantee under subclause (i) for the area, and to other interested entities in the area, reasonable notice with respect to such determination and a reasonable opportunity to offer information with respect to such determination.

(B) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects for the operation of programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and the members of their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to the management of programs assisted under this subparagraph.

(C) The Secretary may make grants to migrant health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (f)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to the management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of repaying loans made by the Farmers Home Administration for buildings; and the costs for which a grant or contract may be made under paragraph (1) may include the costs of providing training related to the provision of primary health services, supplemental health services, and environmental health services, and to the management of migrant health center programs.

(3) Not more than two grants may be made under paragraph (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subparagraph (D) or (E) of subsection (a)(1) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use (I) to expand and improve its services, (II) to increase the number of persons (eligible under subsection (a) to receive services from such a center) it is able to serve, (III) to construct, expand, and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e) The Secretary may enter into contracts with public and private entities to—

(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

(2) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental health hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.

(f)(1) No grant may be made under subsection (c) or (d) and no contract may be entered into under subsection (c)(1)(B), (d)(1)(B), or (e) unless an application therefore[3] is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant or contract which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (sections 276a to 276a-5 of title 40, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) of subsection (d)(1) for a migrant health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

In considering an application for a grant under subparagraph (A) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) The Secretary may not approve an application for a grant under subsection (d)(1)(A) unless the Secretary determines that the entity for which the application is submitted is a migrant health center (within the meaning of subsection (a)(1)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

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[3] As in original. Possibly should be "therefor".

(B) the center will have organizational arrangements, established in accordance with regulations of the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of the Social Security Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation; and

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

For purposes of subparagraph (G) and subsection (h)(4), the term "public center" means a migrant health center funded (or to be funded) through a grant under this section to a public agency.

(4) In considering applications for grants and contracts under subsection (c) or (d)(1)(B), the Secretary shall give priority to applications submitted by community-based organizations which are representative of the populations to be served through the projects, programs, or centers to be assisted by such grants or contracts.

(5) The Secretary, in making a grant under this section to a migrant health center for the provision of environmental health services described in subsection (a)(1)(D), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) Contracts may be entered into under this section without regard to section 529[4] of title 31 and section 5 of title 41.

(7) The Secretary may make a grant under subsection (c) or (d) for the construction of new buildings for a migrant health center or a migrant health program only if the Secretary determines that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.

(g)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any migrant health center or to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a migrant health center, and in meeting the requirements of subsection (f)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(h)(1)(A) For the purposes of subsections (c) through (e), there are authorized to be appropriated $48,500,000 for fiscal year 1990[5] such sums as may be necessary for fiscal years 1990 and 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994[6].

(B) Of the amounts appropriated pursuant to subparagraph (A) for a fiscal year, the Secretary may obligate for grants and contracts under subsection (c)(1) not more than 2 percent, for grants under subsection (d)(1)(C) not more than 5 percent, and for contracts under subsection (e) not more than 10 percent.

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $2,000,000 for fiscal year 1990,[7] $2,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994[8].

(B) The Secretary may make grants to migrant health centers to assist such centers in—

(i) providing services for the reduction of the incidence of infant mortality; and

(ii) developing and coordinating referral arrangements between migrant health centers and other entities for the health management of infants and pregnant women.

(C) In making grants under subparagraph (B), the Secretary shall give priority to migrant health centers providing services in any catchment area in which there is a substantial incidence of infant mortality or in which there is a significant increase in the incidence of infant mortality.

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (f)(3)) the governing

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[4] P.L. 97-258, §4(b), deemed this reference to be to 31 U.S.C. 3324(a) and (b).

[5] P.L. 101-527, §9(b)(1)(A), struck out "1989 and" and substituted "1990".

[6] P.L. 101-527, §9(b)(1)(B), inserted ", and such sums as may be necessary for each of the fiscal years 1992 through 1994".

[7] P.L. 101-527, §9(b)(2)(A), struck out "and".

[8] P.L. 101-527, §9(b)(2)(B), inserted ", and such sums as may be necessary for each of the fiscal years 1992 through 1994".

boards of which (as described in subsection (f)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(i) The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

COMMUNITY HEALTH CENTERS

SEC. 330. [42 U.S.C. 254c] (a) For purposes of this section, the term "community health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(1) primarily health services,

(2) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(3) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(4) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(5) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals, and[9]

(6) patient case management services (including outreach, counseling, referral, and follow-up services),

for all residents of the area it serves (referred to in this section as a "catchment area").

(b) For purposes of this section:

(1) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(2) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and[10]

(M)[11] other services appropriate to meet the health needs of the medically underserved population served by the community health center involved.

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[9] P.L. 101-527, §9(a)(1)(A), amended paragraph (5) in its entirety.

[10] P.L. 101-527, §9(a)(1)(B)(i), added "and".

[11] P.L. 101-527, §9(a)(1)(B)(ii), struck out subparagraph (M) and redesignated subparagraph (N) as subparagraph (M).

(3) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(4) In carrying out paragraph (3), the Secretary shall by regulation prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(A) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(B) include infant mortality in an area or population group, other factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

The Secretary may modify the criteria established in regulations issued under this paragraph only after affording public notice and an opportunity for comment on any such proposed modifications.

(5) The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(A) the chief executive officer of such State;

(B) local officials in such State; and

(C) the State organization, if any, which represents a majority of community health centers in such State.

(6) The Secretary may designate a medically underserved population that does not meet the criteria established under paragraph (4) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c)(1) The Secretary may make grants to public and nonprofit private entities for projects to plan and develop community health centers which will serve medically underserved populations. A project for which a grant may be made under this subsection may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(A) an assessment of the need that the population proposed to be served by the community health center for which the project is undertaken has for primary health services, supplemental health services, and environmental health services;

(B) the design of a community health center program for such population based on such assessment;

(C) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(D) initiation and encouragement of continuing community involvement in the development and operation of the project.

(2) Not more than two grants may be made under this subsection for the same project.

(3) The amount of any grant made under this subsection for any project shall be determined by the Secretary.

(d)(1)(A) The Secretary may make grants for the costs of operation of public and nonprofit private community health centers which serve medically underserved populations.

(B) The Secretary may make grants for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which he is unable to make each of the determinations required by subsection (e)(3).

(C) The Secretary may make grants to community health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (e)(3)(G)) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) or (1)(B) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new buildings (including the costs of amortizing the principal of, and paying interest on, loans), the costs of repaying loans made by the Farmers Home Administration for buildings, and the costs of providing training related to the provision of primary health services, supplemental health services and environmental health services, and to the management of community health center programs.

(3) Not more than two grants may be made under paragraph (1)(B) or (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under paragraph (1) (other than subparagraph (C)) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subsection (a)(4) (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (L), or (M) of subsection (b)(2), the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such a center) it is able to serve, (III) to construct , expand, and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e)(1) No grant may be made under subsection (c) or (d) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 5 U.S.C. Appendix) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(2) An application for a grant under subparagraph (A) or (B) of subsection (d)(1) for a community health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) and in subparagraphs (B), (F), (L), and (M) of subsection (b)(2),

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

Such an application shall also include a demonstration by the applicant that the area or a population group to be served by the applicant has a shortage of personal health services and that the center will be located so that it will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (d)(1), the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health services described in subsection (a) or (b) which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) Except as provided in subsection (d)(1)(B), the Secretary may not approve an application for a grant under paragraph (1)(A) or (1)(B) of subsection (d) unless the Secretary determines that the entity for which the application is submitted is a community health center (within the meaning of subsection (a)) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations prescribed by the Secretary, or (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act, to medical assistance under a State plan approved under title XIX of such Act, or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act,[12] is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

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[12] P.L. 101-239, §6103(e)(5), inserted "except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act,".

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act, and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B);

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation;

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and

(K) the center, in accordance with regulations prescribed by the Secretary, has developed an on-going referral relationship with one or more hospitals.

For purposes of subparagraph (G) and subsection (g)(4), the term "public center" means a community health center funded (or to be funded) through a grant under this section to a public agency.

(4) The Secretary shall approve applications for grants under paragraph (1)(A) or (1)(B) of subsection (d) for community health centers which—

(A) have not received a previous grant under such paragraph, or

(B) have applied for such a grant to expand their services,

in such a manner that the ratio of the medical underserved populations in rural areas which may be expected to use the services provided by such centers to the medical underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4), may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) The Secretary may make a grant under subsection (c) or (d) for the construction of new buildings for a community health center only if the Secretary determines that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.

(f)(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requirements of subsection (e)(2).

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(g)(1)(A) For the purpose of payments under grants under this section, there are authorized to be appropriated $440,000,000 for fiscal year 1989,[13] such sums as may be necessary for fiscal years 1990 and 1991 and such sums as may be necessary for each of the fiscal years 1992 through 1994[14].

(B) The Secretary may not in any fiscal year—

(i) expend for grants to serve medically underserved populations designated under subsection (b)(6) an amount which exceeds 5 percent of the funds appropriated under paragraph (1) for that fiscal year; and

(ii) expend for grants under subsection (d)(1)(C) an amount which exceeds 5 percent of the funds appropriated under paragraph (1) for that fiscal year.

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990,[15] $35,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 through 1994[16].

(B) The Secretary may make grants to community health centers to assist such centers in—

(i) providing services for the reduction of the incidence of infant mortality; and

(ii) developing and coordinating referral arrangements between community health centers and other entities for the health management of infants and pregnant women.

(C) In making grants under subparagraph (B), the Secretary shall give priority to community health centers providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (e)(3)) the governing boards of which (as described in subsection (e)(3)(G)(ii)) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(h) In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new community health centers;

(3) review and comment upon annual program plans and budgets of community health centers, including comments upon allocations of health care resources in the State;

(4) assist community health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of community health centers; and

(5) share information and data relevant to the operation of new and existing community health centers.

(i)(1) Each entity which receives a grant under subsection (d) shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

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[13] P.L. 101-527, §9(a)(2)(1)(A)(sic), struck out "and" and substituted a comma.

[14] P.L. 101-527, §9(a)(2)(1)(B)(sic), inserted "and such sums as may be necessary for each of the fiscal years 1992 through 1994".

[15] P.L. 101-527, §9(a)(2)(2)(A)(sic), struck out "and".

[16] P.L. 101-527, §9(a)(2)(2)(B)(sic), inserted "and such sums as may be necessary for each of the fiscal years 1992 through 1994".

(2) Each entity which receives a grant under subsection (d) shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Each entity which is required to establish and maintain records or to provide for an audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefor. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection to a community health center.

(j) The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(k) In making grants under this section, the Secretary shall give special consideration to the unique needs of frontier areas.

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DESIGNATION OF HEALTH MANPOWER SHORTAGE AREAS

Sec. 332. [42 U.S.C. 254e] (a)(1) For purposes of this subpart the term "health professional[17] shortage area" means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. The Secretary shall not remove an area from the areas determined to be health professional[18] shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health professional[19] shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.

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BREACH OF SCHOLARSHIP CONTRACT OR LOAN REPAYMENT CONTRACT

Sec. 338E. [42 U.S.C. 254o] (a)(1) An individual who has entered into a written contract with the Secretary under section 338A and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or

(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 338B and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

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[17] P.L. 101-597, §401(b)sic(1)(A), struck out "manpower" and substituted "professional".
[18] P.L. 101-597, §401(b)sic(1)(B), struck out "manpower" and substituted "professional".
[19] P.L. 101-597, §401(b)sic(1)(B), struck out "manpower" and substituted "professional".

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 338B(b)(1)(B)(ii),

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b)(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) or section 338F(d)) either to begin such individual's service obligation under section 338A in accordance with section 338C or 338D or to complete such service obligation under section 338A, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A = 3\phi\left(\frac{t-s}{t}\right)$$

in which "A" is the amount the United States is entitled to recover, "ϕ" is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with section 338C or a written agreement under section 338D.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are entitled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under section 753 from a service obligation under section 225 (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 753, subsection (f) of such section 225 shall apply to such individual in lieu of paragraph (1) of this subsection.

(c)(1) If (for any reason not specified in subsection (a) or section 338F(d)) an individual breaches the written contract of the individual under section 338B by failing either to begin such individual's service obligation in accordance with section 338C or 338D or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) in the case of a contract for a 2-year period of obligated service—

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty;

(B) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs before the end of the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty; and

(C) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs after the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 338B(g)(2) on behalf of the individual for any period of obligated service not served; and

(ii) if the individual breaching the contract failed to give the Secretary notice, that the individual intends to take action which constitutes a breach of the contract, at least 1 year (or such shorter period of time as the Secretary determines is adequate for finding a replacement) prior to the breach, $10,000.

(2) For purposes of paragraph (1), the term "unserved obligation penalty" means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B).

(d)(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A)[20] Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of section 225 of this Act, as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94-484.[21]

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HOME HEALTH SERVICES

SEC. 339. [42 U.S.C. 255] (a)(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

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[20] P.L. 101-597, §203(a)(1), inserted "(A)".

[21] P.L. 101-597, §203(a)(2), added subparagraph (B).

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b)(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(c) The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) (as such subsections are in effect on the day after the date of enactment of the Orphan Drug Act[22]); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) For purposes of this section, the term "home health services" has the meaning prescribed for the term by section 1861(m) of the Social Security Act.

GRANT PROGRAM FOR CERTAIN HEALTH SERVICES FOR THE HOMELESS

SEC. 340. [42 U.S.C. 256] (a) ESTABLISHMENT.—(1) The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of health services to homeless individuals.

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[22] January 4, 1983 [P.L. 97-414; 96 Stat. 2049].

(2) In carrying out the program established in paragraph (1), the Administrator shall consult with the Director of the National Institute on Alcohol Abuse and Alcoholism and with the Director of the National Institute of Mental Health.

(b) MINIMUM QUALIFICATIONS OF GRANTEES.—(1) Subject to paragraph (2), the Secretary may not make a grant under subsection (a) to an applicant unless—

(A) the applicant is a public or nonprofit private entity;

(B) the applicant has the capacity to effectively administer a grant under subsection (a); and

(C) in the case of any health service that is covered in the State plan approved under title XIX of the Social Security Act for the State involved—

(i) the applicant for the grant will provide the health service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant for the grant will enter into an agreement with an organization under which the organization will provide the health service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(2)(A) In the case of an organization making an agreement under paragraph (1)(C)(ii) regarding the provision of health services under subsection (a), the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an organization referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.[23]

(d) REQUIREMENT OF SUBMISSION OF APPLICATION CONTAINING CERTAIN AGREEMENTS.—(1) The Secretary may not make a grant under subsection (a) to an applicant unless the applicant has submitted to the Secretary an application for the grant containing agreements in accordance with—

(A) subsection (e)(1)(A)(ii), relating to the provision of matching funds;

(B) subsection (f), relating to the provision of certain health services;

(C) subsection (i), relating to restrictions on the use of funds;

(D) subsection (j), relating to a limitation on charges for services;

(E) subsection (k), relating to the administration of grants; and

(F) subsection (l), relating to a limitation on administrative expenses.

(2) An application required in paragraph (1) shall, with respect to agreements required to be contained in the application, provide assurances of compliance satisfactory to the Secretary and shall otherwise be in such form, be made in such manner, and contain such information in addition to information required in paragraph (1) as the Secretary determines to be necessary to carry out this section.

(e) REQUIREMENT OF PROVISION OF MATCHING FUNDS.—(1)(A) The Secretary may not make a grant under subsection (a) to an applicant—

(i) in an amount exceeding 75 percent of the costs of providing health services for the first fiscal year of payments under the grant and 66 2/3 percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and

(ii) unless the applicant agrees that the applicant will make available, directly or through donations to the applicant, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under subparagraph (B)) for each $3 of Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant.

(B)(i) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(ii) Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services).

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[23] P.L. 101-645, §501, amended subsection (b) in its entirety.

(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.

(f) Requirement of Provision of Certain Health Services.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that the applicant will, directly or through contract—

(1) provide health services at locations accessible to homeless individuals;

(2) provide to homeless individuals, at all hours, emergency health services;

(3) refer homeless individuals as appropriate to medical facilities for necessary hospital services;

(4) refer for mental health services homeless individuals who are mentally ill to entities that provide such services, unless the applicant will provide such services pursuant to subsection (g);

(5) provide outreach services to inform homeless individuals of the availability of health services; and

(6) aid homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs.

(g) Optional Provision of Certain[24] Services.—A grantee under subsection (a) may expend amounts received pursuant to such subsection for the purpose of providing to homeless individuals mental health services, dental services (including dentures), services with respect to vision, and podiatry services[25].

(h) Temporary Continued Provision of Services to Certain Former Homeless Individuals.—If any grantee under subsection (a) has provided services described in subsection (f) or (g) to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.

(i) Restrictions on Use of Grant Funds.—(1) The Secretary may not, except as provided in paragraph (2), make a grant under subsection (a) to an applicant unless the applicant agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(A) for any purpose other than the purposes described in subsections (a) and (g);

(B) to provide inpatient services, except with respect to residential treatment for substance abuse provided in settings other than hospitals;

(C) to make cash payments to intended recipients of health services or mental health services; or

(D) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(2) If the Secretary finds that the purpose described in subsection (a) cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified applicant, waive the restriction established in paragraph (1)(D).

(j) Limitation on Charges for Services.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that, whether health services are provided directly or through contract—

(1) health services under the grant will be provided without regard to ability to pay for the health services; and

(2) if a charge is imposed for the delivery of health services, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will not be imposed on any homeless individual with an income less than the official poverty level; and

(C) will be adjusted to reflect the income and resources of the homeless individual involved.

(k) Requirements With Respect to Administration.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(2) agrees to establish an ongoing program of quality assurance with respect to the health services provided under the grant;

(3) agrees to ensure the confidentiality of records maintained on homeless individuals receiving health services under the grant;

(4) with respect to providing health services to any population of homeless individuals a substantial portion of which has a limited ability to speak the English language—

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[24] P.L. 101-93, §5(t)(3)(B), struck out "Mental Health" and substituted "Certain".

[25] P.L. 101-93, §5(t)(3)(A), struck out "mental health services to homeless individuals" and substituted "to homeless individuals mental health services, dental services (including dentures), services with respect to vision, and podiatry services".

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan; and

(5) agrees to submit to the Secretary an annual report that describes the utilization and costs of health services provided under the grant and that provides such other information as the Secretary determines to be appropriate.

(l) LIMITATION ON ADMINISTRATIVE EXPENSES OF GRANTEE.—The Secretary may not make a grant under subsection (a) to an applicant unless the applicant agrees that the applicant will not expend more than 10 percent of amounts received pursuant to such subsection for the purpose of administering the grant.

(m) USE OF GRANT FUNDS FOR REFERRALS TO CERTAIN ADVOCACY SYSTEMS.—A grantee under subsection (a) may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986, expend amounts received under subsection (a) for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under such Act, to systems that provide advocacy services under such Act.

(n) USE OF SELF-HELP ORGANIZATIONS.—Any grantee under subsection (a) may provide health services through contracts with nonprofit self-help organizations that—

(1) are established and managed by current and former recipients of mental health services, or substance abuse services, who have been homeless individuals; and

(2) with respect to the provision of health services described in subsection (b)(3), are organizations qualified under subparagraph (B) of such subsection.

(o) TECHNICAL ASSISTANCE.—(1) The Secretary may, without charge to any grantee under subsection (a), provide technical assistance to any such grantee with respect to the planning, development, and operation of programs to carry out the purpose described in such subsection. The Secretary may provide such technical assistance directly, through contract, or through grants.

(2) Of the amounts appropriated pursuant to subsection (q)(1) for a fiscal year, the Secretary may expend not more than $2,000,000 for the purpose of carrying out paragraph (1).

(p) ANNUAL REPORTS BY SECRETARY.—Not later than January 10 of each year, the Secretary shall submit to the Congress a report describing the utilization and costs of health services provided under ~~subsection~~ (a) during the immediately preceding fiscal year.

(q) FUNDING.—(1) There are authorized to be appropriated to carry out this section $70,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.[26]

(2) Amounts received by a grantee pursuant to subsection (a) remaining unobligated at the end of the fiscal year in which the amounts were received shall remain available to the grantee during the succeeding fiscal year for the purpose described in such subsection.

(r) DEFINITIONS.—For purposes of this section:

(1) The term "health services" means primary health services and substance abuse services.

(2) The term "homeless individual" means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.

(3) The term "medically underserved population" has the meaning given such term in section 330(b)(3).

(4) The term "official poverty level" means the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(5) The term "organization" includes individuals, corporations, partnerships, companies, and associations.

(6) The term "primary health services" has the meaning given such term in section 330(b)(1).

(7) The term "substance abuse" has the meaning given such term in section 536(4).

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[26] P.L. 101-645, §502, struck out "$61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991." and substituted "$70,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.".

(8) The term "substance abuse services" includes detoxification and residential treatment for substance abuse provided in settings other than hospitals.

(s) GRANTS REGARDING OUTREACH AND PRIMARY HEALTH SERVICES FOR HOMELESS CHILDREN.—

(1) The Secretary may make grants to entities specified in paragraph (2) for the purpose of enabling the entities, directly or through contracts, to carry out demonstration programs—

(A) to provide comprehensive primary health services to homeless children and to children at imminent risk of homelessness, including such services provided through mobile medical units;

(B) to provide referrals for the provision of appropriate health services, social services, and education services to children receiving services under subparagraph (A) (including referrals regarding hospitals, the programs of sections 329 and 330, the program of the Head Start Act (and other programs providing education services), and programs regarding the prevention and treatment of child abuse); and

(C) to provide outreach services to identify children who are homeless and to inform the parents (or other guardians) of the children of the availability of services from the grantees and from the entities or programs specified in subparagraph (B).

(2) The entities referred to in paragraph (1) are—

(A) grantees under subsection (a), and other public and nonprofit private entities (other than children's hospitals) that provide primary health services, and substance abuse services, to a substantial number of homeless individuals; and

(B) public and nonprofit private children's hospitals that provide primary health services to a substantial number of such individuals.

(3)(A) The Secretary may not make a grant under paragraph (1) to a hospital unless the hospital agrees, with respect to the costs of providing services under such paragraph, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than $1 for each $1 of Federal funds provided in the grants.

(B) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(4) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that subsections (b)(3), (h), (i), and (j) will apply to the grant to the same extent and in the same manner as such subsections apply to any grant under subsection (a). For purposes of subsection (i)(1)(D) (including as applied to this subsection by the preceding sentence), mobile medical units shall be considered to be major medical equipment.

(5) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to collect such data as the Secretary determines to be necessary for assessing the efficacy of services provided under paragraph (1) to homeless children.

(6) The Secretary may not make a grant under paragraph (1) unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subsection.

(7) In making grants under paragraph (1), the Secretary shall take into account the needs of homeless children in rural areas.

(8) For the purpose of carrying out this subsection, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1991 through 1993.[27]

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CERTIFICATION OF LABORATORIES

SEC. 353. [42 U.S.C. 263a] (a) DEFINITION.—As used in this section, the term "laboratory" or "clinical laboratory" means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

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[27] P.L. 101-645, §503, added subsection (s).

(b) Certificate Requirement.—No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.

(c) Issuance and Renewal of Certificates.—

(1) In general.—The Secretary may issue or renew a certificate for a laboratory only if the laboratory meets the requirements of subsection (d).

(2) Term.—A certificate issued under this section shall be valid for a period of 2 years or such shorter period as the Secretary may establish.

(d) Requirements for Certificates.—

(1) In general.—A laboratory may be issued a certificate or have its certificate renewed if—

(A) the laboratory submits (or if the laboratory is accredited under subsection (e), the accreditation body which accredited the laboratory submits), an application—

(i) in such form and manner as the Secretary shall prescribe,

(ii) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory including—

(I) the number and types of laboratory examinations and other procedures performed,

(II) the methodologies for laboratory examinations and other procedures employed, and

(III) the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(iii) that contains such other information as the Secretary may require to determine compliance with this section, and

the laboratory agrees to provide to the Secretary (or if the laboratory is accredited, to the accreditation body which accredited it) a description of any change in the information submitted under clause (ii) not later than 6 months after the change was put into effect,

(B) the laboratory provides the Secretary—

(i) with satisfactory assurances that the laboratory will be operated in accordance with standards issued by the Secretary under subsection (f), or

(ii) with proof of accreditation under subsection (e),

(C) the laboratory agrees to permit inspections by the Secretary under subsection (g),

(D) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may reasonably require, and

(E) the laboratory agrees to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business.

(2) Requirements for certificates of waiver.—

(A) In general.—A laboratory which only performs laboratory examinations and procedures described in paragraph (3) shall be issued a certificate of waiver or have its certificate of waiver renewed if—

(i) the laboratory submits an application—

(I) in such form and manner as the Secretary shall prescribe,

(II) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory, including the number and types of laboratory examinations and other procedures performed, the methodologies for laboratory examinations and other procedures employed, and the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(III) that contains such other information as the Secretary may reasonably require to determine compliance with this section, and

(ii) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may require.

(B) Changes.—If a laboratory makes changes in the examinations and other procedures performed by it only with respect to examinations and procedures which are described in paragraph (3), the laboratory shall report such changes to the Secretary not later than 6 months after the change has been put into effect. If a laboratory proposes to make changes in the examinations and procedures performed by it such that the laboratory will perform an examination or procedure not described in paragraph (3), the laboratory shall report such change to the Secretary before the change takes effect.

(C) EFFECT.—Subsections (f) anb (g) shall not apply to a laboratory to which has been issued a certificate of waiver.

(3) EXAMINATIONS AND PROCEDURES.—The examinations and procedures identified in paragraph (2) are simple laboratory examinations and procedures which, as determined by the Secretary, have an insignificant risk of an erroneous result, including those which—

(A) have been approved by the Food and Drug Administration for home use,

(B) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or

(C) the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.

(4) DEFINITION.—As used in this section, the term "certificate" includes a certificate of waiver issued under paragraph (2).

(e) ACCREDITATION.—

(1) IN GENERAL.—A laboratory may be accredited for purposes of obtaining a certificate if the laboratory—

(A) meets the standards of an approved accreditation body, and

(B) authorizes the accreditation body to submit to the Secretary (or such State agency as the Secretary may designate) such records or other information as the Secretary may require.

(2) APPROVAL OF ACCREDITATION BODIES.—

(A) IN GENERAL.—The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of laboratories if—

(i) using inspectors qualified to evaluate the methodologies used by the laboratories in performing laboratory examinations and other procedures, the accreditation body agrees to inspect a laboratory for purposes of accreditation with such frequency as determined by Secretary,

(ii) the standards applied by the body in determining whether or not to accredit a laboratory are equal to or more stringent than the standards issued by the Secretary under subsection (f),

(iii) there is adequate provision for assuring that the standards of the accreditation body continue to be met by the laboratory,

(iv) in the case of any laboratory accredited by the body which has had its accreditation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such laboratory within 30 days of the action taken,

(v) the accreditation body agrees to notify the Secretary at least 30 days before it changes its standards, and

(vi) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each laboratory accredited by the body of the withdrawal within 10 days of the withdrawal.

(B) CRITERIA AND PROCEDURES.—The Secretary shall promulgate criteria and procedures for approving an accreditation body and for withdrawing such approval if the Secretary determines that the accreditation body does not meet the requirements of subparagraph (A).

(C) EFFECT OF WITHDRAWAL OF APPROVAL.—If the Secretary withdraws the approval of an accreditation body under subparagraph (B), the certificate of any laboratory accredited by the body shall continue in effect for 60 days after the laboratory receives notification of the withdrawal of the approval, except that the Secretary may extend such period for a laboratory if it determines that the laboratory submitted an application for accreditation or a certificate in a timely manner after receipt of the notification of the withdrawal of approval. If an accreditation body withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory shall continue in effect—

(i) for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

(ii) until the effective date of any action taken by the Secretary under subsection (i).

(D) EVALUATIONS.—The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g) a sufficient number of the laboratories accredited by such body to allow a reasonable estimate of the performance of such body, and

(ii) such other means as the Secretary determines appropriate.

(3) REPORT.—The Secretary shall annually prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that describes the results of the evaluation conducted under paragraph (2)(D).

(f) STANDARDS.—

(1) IN GENERAL.—The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section—

(A) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results,

(B) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,

(C) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualifications shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,

(D) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and

(E) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

(2) CONSIDERATIONS.—In developing the standards to be issued under paragraph (1), the Secretary shall, within the flexibility provided under subparagraphs (A) through (E) of paragraph (1), take into consideration—

(A) the examinations and procedures performed and the methodologies employed,

(B) the degree of independent judgment involved,

(C) the amount of interpretation involved,

(D) the difficulty of the calculations involved,

(E) the calibration and quality control requirements of the instruments used,

(F) the type of training required to operate the instruments used in the methodology, and

(G) such other factors as the Secretary considers relevant.

(3) PROFICIENCY TESTING PROGRAM.—

(A) IN GENERAL.—The Secretary shall establish standards for the proficiency testing programs for laboratories issued a certificate under this section which are conducted by the Secretary, conducted by an organization approved under subparagraph (C), or conducted by an approved accrediting body. The standards shall require that a laboratory issued a certificate under this section be tested for each examination and procedure conducted within a category of examinations or procedures for which it has received a certificate, except for examinations and procedures for which the Secretary has determined that a proficiency test cannot reasonably be developed. The testing shall be conducted on a quarterly basis, except where the Secretary determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year).

(B) CRITERIA.—The standards established under subparagraph (A) shall include uniform criteria for acceptable performance under a proficiency testing program, based on the available technology and the clinical relevance of the laboratory examination or other procedure subject to such program. The criteria shall be established for all examinations and procedures and shall be uniform for each examination and procedure. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory has performed acceptably for a particular quarter and acceptably for a particular examination or procedure or category of examination or procedure over a period of successive quarters.

(C) APPROVED PROFICIENCY TESTING PROGRAMS.—For the purpose of administering proficiency testing programs which meet the standards established under subparagraph (A), the Secretary shall approve a proficiency testing program offered by a private nonprofit organization or a State if the program meets the standards established under subparagraph (A) and the organization or State provides technical assistance to laboratories seeking to qualify under the program. The Secretary shall evaluate each program approved under this subparagraph annually to determine if the program continues to meet the standards established under subparagraph (A) and shall withdraw the approval of any program that no longer meets such standards.

(D) ON-SITE TESTING.—The Secretary shall perform, or shall direct a program approved under subparagraph (C) to perform, onsite proficiency testing to assure compliance with the requirements of subsection (d)(5). The Secretary shall perform, on an onsite or other basis, proficiency testing to evaluate the performance of a proficiency testing program approved under subparagraph (C) and to assure quality performance by a laboratory.

(E) TRAINING, TECHNICAL ASSISTANCE, AND ENHANCED PROFICIENCY TESTING.—The Secretary may, in lieu of or in addition to actions authorized under subsection (h), (i), or (j), require any laboratory which fails to perform acceptably on an individual examination and procedure or a category of examination and procedures—

(i) to undertake training and to obtain the necessary technical assistance to meet the requirements of the proficency[28] testing program,

(ii) to enroll in a program of enhanced proficiency testing, or

(iii) to undertake any combination of the training, technical assistance, or testing described in clauses (i) and (ii).

(F) TESTING RESULTS.—The Secretary shall establish a system to make the results of the proficiency testing programs subject to the standards established by the Secretary under subparagraph (A) available, on a reasonable basis, upon request of any person. The Secretary shall include with results made available under this subparagraph such explanatory information as may be appropriate to assist in the interpretation of such results.

(4) NATIONAL STANDARDS FOR QUALITY ASSURANCE IN CYTOLOGY SERVICES.—

(A) ESTABLISHMENT.—The Secretary shall establish national standards for quality assurance in cytology services designed to assure consistent performance by laboratories of valid and reliable cytological services.

(B) STANDARDS.—The standards established under subparagraph (A) shall include—

(i) the maximum number of cytology slides that any individual may screen in a 24-hour period,

(ii) requirements that a clinical laboratory maintain a record of (I) the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory, and (II) the number of hours devoted during each 24-hour period to screening cytology slides by such individual,

(iii) criteria for requiring rescreening of cytological preparations, such as (I) random rescreening of cytology specimens determined to be in the benign category, (II) focused rescreening of such preparations in high risk groups, and (III) for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available,

(iv) periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions,

(v) procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides,

(vi) requirements that all cytological screening be done on the premises of a laboratory that is certified under this section,

(vii) requirements for the retention of cytology slides by laboratories for such periods of time as the Secretary considers appropriate, and

(viii) standards requiring periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

(g) INSPECTIONS.—

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[28] As in original; should be "proficiency".

(1) In general.—The Secretary may, on an announced or unannounced basis, enter and inspect, during regular hours of operation, laboratories which have been issued a certificate under this section. In conducting such inspections the Secretary shall have access to all facilities, equipment, materials, records, and information that the Secretary determines have a bearing on whether the laboratory is being operated in accordance with this section. As part of such an inspection the Secretary may copy any such material or require to it[29] be submitted to the Secretary. An inspection under this paragraph may be made only upon presenting identification to the owner, operator, or agent in charge of the laboratory being inspected.

(2) Compliance with requirements and standards.—The Secretary shall conduct inspections of laboratories under paragraph (1) to determine their compliance with the requirements of subsection (d) and the standards issued under subsection (f). Inspections of laboratories not accredited under subsection (e) shall be conducted on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with such requirements and standards. Inspections of laboratories accredited under subsection (e) shall be conducted on such basis as the Secretary determines is necessary to assure compliance with such requirements and standards.

(h) Intermediate Sanctions.—

(1) In general.—If the Secretary determines that a laboratory which has been issued a certificate under this section no longer substantially meets the requirements for the issuance of a certificate, the Secretary may impose intermediate sanctions in lieu of the actions authorized by subsection (i).

(2) Types of sanctions.—The intermediate sanctions which may be imposed under paragraph (1) shall consist of—

(A) directed plans of correction,

(B) civil money penalties in an amount not to exceed $10,000 for each violation listed in subsection (i)(1) or for each day of substantial noncompliance with the requirements of this section,

(C) payment for the costs of onsite monitoring, or

(D) any combination of the actions described in subparagraphs (A), (B), and (C).

(3) Procedures.—The Secretary shall develop and implement procedures with respect to when and how each of the intermediate sanctions is to be imposed under paragraph (1). Such procedures shall provide for notice to the laboratory and a reasonable opportunity to respond to the proposed sanction and appropriate procedures for appealing determinations relating to the imposition of intermediate sanctions[30]

(i) Suspension, Revocation, and Limitation.—

(1) In general.—Except as provided in paragraph (2), the certificate of a laboratory issued under this section may be suspended, revoked, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

(A) has been guilty of misrepresentation in obtaining the certificate,

(B) has performed or represented the laboratory as entitled to perform a laboratory examination or other procedure which is not within a category of laboratory examinations or other procedures authorized in the certificate,

(C) has failed to comply with the requirements of subsection (d) or the standards prescribed by the Secretary under subsection (f),

(D) has failed to comply with reasonable requests of the Secretary for—

(i) any information or materials, or

(ii) work on materials,

that the Secretary concludes is necessary to determine the laboratory's continued eligibility for its certificate or continued compliance with the Secretary's standards under subsection (f),

(E) has refused a reasonable request of the Secretary, or any Federal officer or employee duly designated by the Secretary, for permission to inspect the laboratory and its operations and pertinent records during the hours the laboratory is in operation,

(F) has violated or aided and abetted in the violation of any provisions of this section or of any regulation promulgated thereunder, or

(G) has not complied with an intermediate sanction imposed under subsection (h).

(2) Action before a hearing.—If the Secretary determines that—

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[29] Probably should be "it to".

[30] As in original; no closing punctuction.

(A) the failure of a laboratory to comply with the standards of the Secretary under subsection (f) presents an imminent and serious risk to human health, or

(B) a laboratory has engaged in an action described in subparagraph (D) or (E) of paragraph (1),

the Secretary may suspend or limit the certificate of the laboratory before holding a hearing under paragraph (1) regarding such failure or refusal. The opportunity for a hearing shall be provided no later than 60 days from the effective date of the suspension or limitation. A suspension or limitation under this paragraph shall stay in effect until the decision of the Secretary made after the hearing under paragraph (1).

(3) INELIGIBILITY TO OWN OR OPERATE LABORATORIES AFTER REVOCATION.—No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVIII of the Social Security Act because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

(4) IMPROPER REFERRALS.—Any laboratory that the Secretary determines intentionally refers its proficiency testing samples to another laboratory for analysis shall have its certificate revoked for at least one year and shall be subject to appropriate fines and penalties as provided for in subsection (h).

(j) INJUNCTIONS.—Whenever the Secretary has reason to believe that continuation of any activity by a laboratory would constitute a significant hazard to the public health the Secretary may bring suit in the district court of the United States for the district in which such laboratory is situated to enjoin continuation of such activity. Upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this subsection shall be granted without bond by such court.

(k) JUDICIAL REVIEW.—

(1) PETITION.—Any laboratory which has had an intermediate sanction imposed under subsection (h) or has had its certificate suspended, revoked, or limited under subsection (i) may, at any time within 60 days after the date the action of the Secretary under subsection (i) or (h) becomes final, file a petition with the United States court of appeals for the circuit wherein the laboratory has its principal place of business for judicial review of such action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary for that purpose. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28, United State Code.

(2) ADDITIONAL EVIDENCE.—If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal of such additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file such modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

(3) JUDGMENT OF COURT.—Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) FINALITY OF JUDGMENT.—The judgment of the court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(l) SANCTIONS.—Any person who intentionally violates any requirement of this section or any regulation promulgated thereunder shall be imprisoned for not more than one year or fined under title 18, United States Code or both, except that if the conviction is for a second or subsequent violation of such a requirement such person shall be imprisoned for not more than 3 years or fined in accordance with title 18, United States Code or both.

(m) FEES.—

(1) CERTIFICATE FEES.—The Secretary shall require payment of fees for the issuance and renewal of certificates, except that the Secretary shall only require a nominal fee for the issuance and renewal of certificates of waiver.

(2) ADDITIONAL FEES.—The Secretary shall require the payment of fees for inspections of laboratories which are not accredited and for the cost of performing proficiency testing on laboratories which do not participate in proficiency testing programs approved under subsection (f)(3)(C).

(3) CRITERIA.—

(A) FEES UNDER PARAGRAPH (1).—Fees imposed under paragraph (1) shall be sufficient to cover the general costs of administering this section, including evaluating and monitoring proficiency testing programs approved under subsection (f) and accrediting bodies and implementing and monitoring compliance with the requirements of this section.

(B) FEES UNDER PARAGRAPH (2).—Fees imposed under paragraph (2) shall be sufficient to cover the cost of the Secretary in carrying out the inspections and proficiency testing described in paragraph (2).

(C) FEES IMPOSED UNDER PARAGRAPHS (1) AND (2).—Fees imposed under paragraphs (1) and (2) shall vary by group or classification of laboratory, based on such considerations as the Secretary determines are relevant, which may include the dollar volume and scope of the testing being performed by the laboratories.

(n) INFORMATION.—On April 1, 1990 and annually thereafter, the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

(2) a list of laboratories—

(A) which have had their certificates revoked, suspended, or limited under subsection (i), or

(B) which have been the subject of a sanction under subsection (l),

together with a statement of the reasons for the revocation, suspension, limitation, or sanction,

(3) a list of laboratories subject to intermediate sanctions under subsection (h) together with a statement of the reasons for the sanctions,

(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

(5) a list of laboratories against which the Secretary has taken action under subsection (j) together with a statement of the reasons for such action, and

(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act.

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

(o) DELEGATION.—In carrying out this section, the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or nonprofit private organization, and may pay therefor in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(p) STATE LAWS.—

(1) Except as provided in paragraph (2), nothing in this section shall be construed as affecting the power of any State to enact and enforce laws relating to the matters covered by this section to the extent that such laws are not inconsistent with this section or with the regulations issued under this section.

(2) If a State enacts laws relating to matters covered by this section which provide for requirements equal to or more stringent than the requirements of this section or than the regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section.

(q) CONSULTATIONS.—In carrying out this section, the Secretary shall consult with appropriate private organizations and public agencies.

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PART H—ORGAN TRANSPLANTS

[31]ORGAN PROCUREMENT ORGANIZATIONS

SEC. 371. [42 U.S.C. 273] (a)(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b).

(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b).

(3) The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other nonprofit private entities for the purpose of carrying out special projects[32] designed to increase the number of organ donors.

[(4) Stricken.[33]]

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,[34]

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2), and

(iii) has no authority over any other activity of the organization.

(2)(A) Not later than 90 days after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).

(B) Not later than 1 year after the date of enactment of this paragraph, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).[35]

(3)[36] An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

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[31] P.L. 101-616, §201(a), struck out "ASSISTANCE FOR".

[32] P.L. 101-616, §201(b)(1), struck out "may make grants for special projects" and substituted "may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) and other nonprofit private entities for the purpose of carrying out special projects".

[33] P.L. 101-616, §201(b)(2), struck out paragraph (4).

[34] P.L. 101-616, §201(c)(1), amended subparagraph (E) in its entirety.

[35] P.L. 101-616, §201(d)(2), added this paragraph (2).

[36] P.L. 101-616, §201(d)(1), redesignated paragraph (2) as paragraph (3).

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(E), including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs equitably among transplant patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors,

(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs, and

(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

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ORGAN PROCUREMENT AND TRANSPLANTATION NETWORK

SEC. 372. [42 U.S.C. 274] (a) The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b). The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b)(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation[37], and

(B) have a board of directors—

(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 371), transplant centers, voluntary health associations, and the general public; and

(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.[38]

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the nationwide[39] distribution of organs equitably among transplant patients[40],

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

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[37] P.L. 101-616, §202(a)(1), struck out "which is not engaged in any activity unrelated to organ procurement" and substituted "that has an expertise in organ procurement and transplantation".

[38] P.L. 101-616, §202(a)(2), amended subparagraph (B) in its entirety.

[39] P.L. 101-616, §202(b)(1)(A), inserted "nationwide".

[40] P.L. 101-616, §202(b)(1)(B), inserted "equitably among transplant patients".

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility[41] of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donation and transplants,[42]

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation, and[43]

(K) work actively to increase the supply of donated organs.[44]

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network.[45]

(c) The Secretary shall establish procedures for—

(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b); and

(2) the consideration by the Secretary of such critical comments.

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STATE PLANS

Sec. 604. [42 U.S.C. 291d] (a) Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) will have authority to carry out such plan in conformity with this part;

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 603 and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

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[41] P.L. 101-616, §202(c). struck out "compatability" and substituted "compatibility".
[42] P.L. 101-616, §202(b)(2), struck out "and".
[43] P.L. 101-616, §202(b)(3), struck out the period and substituted ", and".
[44] P.L. 101-616, §202(b)(4), added subparagraph (K).
[45] P.L. 101-616, §202(b)(4), added subparagraph (L).

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 601(a) or (b) in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) and regulations prescribed under section 603 and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4);

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 603, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8)[46] provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10);

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

(13) Effective[47] July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of, physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

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Sec. 912. [42 U.S.C. 299b-1]

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(d) Date Certain for Initial Guidelines and Standards.—The Administrator, by not later than January 1, 1991, shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria under subsection (a) that includes not less than 3 clinical treatments or conditions described in section 1142(a)(3) of the Social Security Act.

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Sec. 913. [42 U.S.C. 299b-2] PROCESS FOR DEVELOPMENT OF GUIDELINES AND STANDARDS.

(a) Development Through Contracts and Panels.—The Director shall—

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[46] Sec. 208(a)(3) of P.L. 91-648 (42 U.S.C. 4728) transferred to the U.S. Civil Service Commission all functions, powers, and duties of the Secretary under any law applicable to a grant program which requires the establishment and maintenance of personnel standards on a merit basis with respect to the program.

[47] As in original. Possibly should be "effective".

(1) enter into contracts with public and nonprofit private entities for the purpose of developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 912(a); and

(2) convene panels of appropriately qualified experts (including practiciing physicians with appropriate expertise) and health care consumers for the purpose of—

(A) developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 912(a); and

(B) reviewing the guidelines, standards, performance measures, and review criteria developed under contracts under paragraph (1).

(b) AUTHORITY FOR ADDITIONAL PANELS.—The Director may convene panels of appropriately qualified experts (including practicing physicians with appropriate expertise) and health care consumers for the purpose of—

(1) developing the standards and criteria described in section 914(b); and

(2) providing advice to the Administrator and the Director with respect to any other activities carried out under this part or under section 902(a)(2).

(c) SELECTION OF PANEL MEMBERS.—In selecting individuals to serve on panels convened under this section, the Director shall consult with a broad range of interested individuals and organizations, including organizations representing physicians in the general practice of medicine and organizations representing physicians in specialties and subspecialties pertinent to the purposes of the panel involved. The Director shall seek to appoint physicians reflecting a variety of practice settings.

SEC. 914. [42 U.S.C. 299b-3] ADDITIONAL REQUIREMENTS.—

(a) PROGRAM AGENDA.—

(1) IN GENERAL.—The Administrator shall provide for an agenda for the development of the guidelines, standards, performance measures, and review criteria described in section 912(a), including—

(A) with respect to the guidelines, identifying specific diseases, disorders, and other health conditions for which the guidelines are to be developed and those that are to be given priority in the development of the guidelines; and

(B) with respect to the standards, performance measures, and review criteria, identifying specific aspects of health care for which the standards, performance measures, and review criteria are to be developed and those that are to be given priority in the development of the standards, performance measures, and review criteria.

(2) CONSIDERATION OF CERTAIN FACTORS IN ESTABLISHING PRIORITIES.—

(A) Factors considered by the Administrator in establishing priorities for purposes of paragraph (1) shall include consideration of the extent to which the guidelines, standards, performance measures, and review criteria involved can be expected—

(i) to improve methods of prevention, diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

(ii) to reduce clinically significant variations among physicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

(iii) to reduce clinically significant variations in the outcomes of health care services and procedures.

(B) In providing for the agenda required in paragraph (1), including the priorities, the Administrator shall consult with the Administrator of the Health Care Financing Administration and otherwise act consistent with section 1142(b)(3) of the Social Security Act.

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SEC. 1301. [42 U.S.C. 300e] (a) For purposes of this title, the term "health maintenance organization" means a public or private entity which is organized under the laws of any State and which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b), and (2) is organized and operated in the manner prescribed by subsection (c).

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(c) Each health maintenance organization shall—

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(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act in accordance with procedures approved under regulations promulgated by the Secretary;

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(8) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), an effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

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DEFINITIONS

Sec. 1302. [42 U.S.C. 300e-1] For purposes of this title:

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(7) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term "community rating system" means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members:

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10, United States Code, or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5, United States Code) or any health benefits program for employees of States, political subdivision of States, and other public entities.

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EMPLOYEES' HEALTH BENEFITS PLANS

SEC. 1310. [42 U.S.C. 300e-9]

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(d) For purposes of this section, the term "qualified health maintenance organization" means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to becomes a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).[48]

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CONTINUED REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

SEC. 1312. [42 U.S.C. 300e-11] (a) If the Secretary determines that an entity which received a grant, contract, loan, or loan guarantee under this title as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 1310—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 1301(b), or

(3) is not organized or operated in the manner prescribed by section 1301(c),

the Secretary may take the action authorized by subsection (b).

(b)(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 1310(d)(1), a determination described in subsection (a), the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 1310 until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 1310, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

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[48] Effective October 24, 1995, this subsection is repealed. Section 1310, as added by P.L. 100-517, §7(b), will become effective.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this title, a determination described in subsection (a), the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this title for the grant, contract, loan, or loan guarantee.

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FINANCIAL DISCLOSURE

SEC. 1318. [42 U.S.C. 300e-17] (a) Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1124 of the Social Security Act by disclosing entities and the information required to be supplied under section 1902(a)(38) of such Act.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) For the purposes of this section the term "party in interest" means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on[49] other interest valuing more than 5 per centum of the assets of such entity;

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[49] As in original. Possibly should be "or".

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Each health maintenance organization shall make the information reported pursuant to subsection (a) available to its enrollees upon reasonable request.

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[*Internal References.*—S.S. Act §§501(b); 1101(a); 1121(a) and (c); 1122(b) and (d), 1124(a); 1128B(b); 1138(a) and (b); 1142(a) and (b); 1833(m); 1842(b); 1861(s), (v), and (aa); 1876(b), (e), and (i); 1883(b); 1892(a) and (b); 1902(e); 1903(g) and (m); 1905(a) and (l); and 1920(b) cite the Public Health Service Act and S.S. Act titles V, XVIII, and XIX and §§1124 and 1861(o) catchlines and §1902(a) have footnotes referring to P.L. 78-410.]

P.L. 79-291, Approved December 29, 1945 (59 Stat. 669)
[International Organizations Immunities Act]

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TITLE I

SECTION 1. [22 U.S.C. 288] For the purposes of this title, the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities herein provided. The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this title (including the amendments made by this title) or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities herein provided or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title.

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SEC. 10. [22 U.S.C. 288 note] This title may be cited as the "International Organizations Immunities Act".

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[*Internal Reference.*—S.S. Act §210(a) cites the International Organizations Immunities Act.]

P.L. 79-396, Approved June 4, 1946 (60 Stat. 239)
National School Lunch Act

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SEC. 12. [42 U.S.C. 1760]

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(e) The value of assistance to children under this Act shall not be considered to be income or resources for any purposes under any Federal or State laws, including laws relating to taxation and welfare and public assistance programs.

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SEC. 17. [42 U.S.C. 1766]

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(p)(1) For purposes of this section, adult day care centers shall be considered eligible institutions for reimbursement for meals or supplements served to persons 60 years of age or older or to chronically impaired disabled persons, including victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction. Reimbursement provided to such institutions for such purposes shall improve the quality of meals or level of services provided or increase participation in the program. Lunches served by each such institution for which reimbursement is claimed under this section shall provide, on the average, approximately 1/3 of the daily recommended dietary allowance established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences.[1] Such institutions shall make reasonable efforts to serve meals that meet the special dietary requirements of participants, including efforts to serve foods in forms palatable to participants.[2]

(2) For purposes of this subsection—

(A) the term "adult day care center" means any public agency or private nonprofit organization, or any proprietary title XIX or title XX center, which—

(i) is licensed or approved by Federal, State, or local authorities to provide adult day care services to chronically impaired disabled adults or persons 60 years of age or older in a group setting outside their homes on a less than 24-hour basis; and

(ii) provides for such care and services directly or under arrangements made by the agency or organization whereby the agency or organization maintains professional management responsibility for all such services; and

(B) the term "proprietary title XIX or title XX center" means any private, for-profit center providing adult day care services for which it receives compensation from amounts granted to the States under title XIX or XX of the Social Security Act and which title XIX or title XX beneficiaries were not less than 25 percent of enrolled eligible participants in a calendar month preceding initial application or annual reapplication for program participation.

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(4) For the purpose of establishing eligibility for free or reduced price[3] meals or supplements under this subsection, income shall include only the income of an eligible person and, if any, the spouse and dependents with whom the eligible person resides.

(5) A person described in paragraph (1) shall be considered automatically eligible for free meals or supplements under this subsection, without further application or eligibility determination, if the person is—

(A) a member of a household receiving assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

(B) a recipient of assistance under title XVI or XIX of the Social Security Act (42 U.S.C. 1381 et seq.).

(6) The Governor of any State may designate to administer the program under this subsection a State agency other than the agency that administers the child care food program under this section.[4]

(q)(1) From amounts appropriated or otherwise made available for purposes of carrying out this section, the Secretary shall carry out 2 statewide demonstration projects under which private for-profit organizations providing nonresidential day care services shall qualify as institutions for the purposes of this section. An organization may participate in a demonstration project described in the preceding sentence if—

(A) at least 25 percent of the children served by such organization meet the income eligibility criteria established under section 9(b) for free or reduced price meals; and

(B) as a result of the participation of the organization in the project—

(i) the nutritional content or quality of meals and snacks served to children under the care of such organization will be imporved; or

(ii) fees charged by such organization for the care of the children described in subparagraph (A) will be lowered.

(2) Under each such project, the Secretary shall examine—

(A) the budgetary impact of the change in eligibiltiy being tested;

(B) the extent to which, as a result of such change, additional low-income children can be reached; and

(C) which outreach methods are most effective.

(3) The Secretary shall choose to conduct demonstration projects under this subsection—

(A) 1 State that—

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[1] P.L. 101-147, §105(b)(3)(A), added this sentence.

[2] P.L. 101-147, §105(b)(3)(A), added this sentence.

[3] P.L. 101-147, §312(2), struck out "reduced-price" and substituted "reduced price".

[4] P.L. 101-147, §105(b)(3)(B), added paragraph (6).

(i) has a history of participation of for-profit organizations in the child care food program;

(ii) allocates a significant proportion of the amounts it receives for child care under title XX of the Social Security Act in a manner that allows low-income parents to choose the type of child care their children will receive;

(iii) has other funding mechanisms that support parental choice for child care;

(iv) has a large, State-regulated for-profit child care industry that serves low-income children; and

(v) has large sponsors of family or group day care homes that have a history of recruiting and sponsoring for-profit child care centers in the child care food program; and

(B) 1 State in which—

(i) the majority of children for whom child care arrangements are made are being cared for in center-based child care facilities;

(ii) for-profit child care centers and preschools are located throughout the State and serve both rural and urban populations;

(iii) at least 1/3 of the licensed child care centers and preschools operate as for-profit facilities;

(iv) all licensed facilities are subject to identical nutritional requirements for food service that are similar to those required under the child care food program; and

(v) less than 1 percent of child care centers participating in the child care food program receive assistance under title XX of the Social Security Act.

(4) Such project shall—

(A) commence not earlier than May 1, 1990, and not later than June 30, 1990; and

(B) terminate on September 30, 1992.[5]

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[*Internal References.*—S.S. Act titles XIX and XX and §§1612(b) and 1613(a) catchlines and §§402(a) and 1002(a) have footnotes referring to P.L. 79-396.]

P.L. 79-733, Approved August 14, 1946 (60 Stat. 1090)

[Agricultural Marketing Act of 1946]

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TITLE II

[7 U.S.C. 1621 note] This title may be cited as the "Agricultural Marketing Act of 1946".

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SEC. 205. [7 U.S.C. 1624] (a) In carrying out the provisions of title II of this Act, the Secretary of Agriculture may cooperate with other branches of the Government, State agencies, private research organizations, purchasing and consuming organizations, boards of trade, chambers of commerce, other associations of business or trade organizations, transportation and storage agencies and organizations, or other persons or corporations engaged in the production, transportation, storing, processing, marketing, and distribution of agricultural products whether operating in one or more jurisdictions. The Secretary of Agriculture shall have authority to enter into contracts and agreements under the terms of regulations promulgated by him with States and agencies of States, private firms, institutions, and individuals for the purpose of conducting research and service work, making and compiling reports and surveys, and carrying out other functions relating thereto when in his judgment the services or functions to be performed will be carried out more effectively, more rapidly, or at less cost than if performed by the Department of Agriculture. Contracts hereunder may be made for work to be performed within a period not more than four years from the date of any such contract, and advance, progress, or other payments may be made. The provisions of section 3648 (31 U.S.C., sec. 529[1]) and section 3709 (41 U.S.C., sec. 5) of the

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[5] P.L. 101-147, §105(b)(4), added subsection (q).

[1] P.L. 97-258, §4(b), deems this reference to be to 31 U.S.C. 3324(a) and (b).

Revised Statutes shall not be applicable to contracts or agreements made under the authority of this section. Any unexpended balances of appropriations obligated by contracts as authorized by this section may, notwithstanding the provisions of section 5 of the Act of June 20, 1874, as amended (31 U.S.C., sec. 713), remain upon the books of the Treasury for not more than five fiscal years before being carried to the surplus fund and covered into the Treasury. Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.

(b) The Secretary of Agriculture shall promulgate such orders, rules, and regulations as he deems necessary to carry out the provisions of this title.

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[*Internal Reference.*—S.S. Act §218(b) cites the Agricultural Marketing Act of 1946.]

P.L. 80-759, Approved June 24, 1948 (62 Stat. 604)
Military Selective Service Act

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SECTION 1. [50 U.S.C. App. 451] (a) This Act may be cited as the "Military Selective Service Act".

(b) The Congress hereby declares that an adequate armed strength must be achieved and maintained to insure the security of this Nation.

(c) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.

(d) The Congress further declares, in accordance with our traditional military policy as expressed in the National Defense Act of 1916, as amended, that it is essential that the strength and organization of the National Guard, both Ground and Air, as an integral part of the first line defenses of this Nation, be at all times maintained and assured.

To this end, it is the intent of the Congress that whenever Congress shall determine that units and organizations are needed for the national security in excess of those of the Regular components of the Ground Forces and the Air Forces, and those in active service under this title, the National Guard of the United States, both Ground and Air, or such part thereof as may be necessary, together with such units of the Reserve components as are necessary for a balanced force, shall be ordered to active Federal service and continued therein so long as such necessity exists.

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SEC. 12. [50 U.S.C. App. 462]

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(e) The President may require the Secretary of Health and Human Services to furnish to the Director, from records available to the Secretary, the following information with respect to individuals who are members of any group of individuals required by a proclamation of the President under section 3 to present themselves for and submit to registration under such section: name, date of birth, social security account number, and address. Information furnished to the Director by the Secretary under this subsection shall be used only for the purpose of the enforcement of this Act.

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[*Internal References.*—S.S. Act §210(m) cites the Military Selective Service Act and SSAct §§205(c) and 208(h) have footnotes referring to P.L. 80-759.]

P.L. 81-171, Approved July 15, 1949 (63 Stat. 413)
Housing Act of 1949[1]

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[1] See P.L. 94-375, §2(h) (this volume), with respect to exclusion of housing assistance under this law from income and resources for purposes of title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act.

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SEC. 521. [42 U.S.C. 1490a] * * *
(a)(1) * * *
(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing. In the case of assistance provided under this subparagraph with respect to a loan under section 502, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.

(C) For persons of low income under section 502 or 517(a) who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this title, the National Housing Act, and the United States Housing Act of 1937) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

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(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act and the United States Housing Act of 1937.

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[*Internal References.*—S.S. Act §1612(b) cites the Housing Act of 1949 and S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P. L. 81-171.]

P.L. 81-474, Approved April 19, 1950 (64 Stat. 44)
[Navajo and Hopi Indians]

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SEC. 9. [25 U.S.C. 639] Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under section 403(a) of the Social Security Act) an amount, in addition to the amount prescribed to be paid to such State under such section, equal to 80 per centum of the total amount of contributions by the State toward expenditures during the preceding quarter by the State, under the State plan approved under the Social Security Act for aid to dependent children to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under section 403(a) of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such section.

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[*Internal Reference.*—S.S. Act §403(a) has a footnote referring to P. L. 81-474.]

P.L. 81-831, Enacted September 23, 1950 (64 Stat. 987, 991)
Internal Security Act of 1950

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CERTAIN PROHIBITED ACTS

SEC. 4. [50 U.S.C. 783] (a) It shall be unlawful for any person knowingly to combine, conspire, or agree with any other person to perform any act which would substantially contribute to the establishment within the United States of a totalitarian dictatorship, as defined in paragraph (15) of section 3 of this title, the direction and control of which is to be vested in, or exercised by or under the domination or control of, any foreign government, foreign organization, or foreign individual: *Provided, however*, That this subsection shall not apply to the proposal of a constitutional amendment.

(b) It shall be unlawful for any officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, to communicate in any manner or by any means, to any other person whom such officer or employee knows or has reason to believe to be an agent or representative of any foreign government or an officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, knowing or having reason to know that such information has been so classified, unless such officer or employee shall have been specifically authorized by the President, or by the head of the department, agency, or corporation by which this officer or employee is employed, to make such disclosure of such information.

(c) It shall be unlawful for any agent or representative of any foreign government, or any officer or member of any Communist organization as defined in paragraph (5) of section 3 of this title, knowingly to obtain or receive, or attempt to obtain or receive, directly or indirectly, from any officer or employee of the United States or of any department or agency thereof or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, any information of a kind which shall have been classified by the President (or by the head of any such department, agency, or corporation with the approval of the President) as affecting the security of the United States, unless special authorization for such communication shall first have been obtained from the head of the department, agency, or corporation having custody of or control over such information.

(d) Any person who violates any provision of this section shall, upon conviction thereof, be punished by a fine of not more than $10,000, or imprisonment for not more than ten years, or by both such fine and such imprisonment, and shall, moreover, be thereafter ineligible to hold any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

(e) Any person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after the commission of such offense, notwithstanding the provisions of any other statute of limitations: *Provided*, That if at the time of the commission of the offense such person is an officer or employee of the United States or of any department or agency thereof, or of any corporation the stock of which is owned in whole or in major part by the United States or any department or agency thereof, such person may be prosecuted, tried, and punished for any violation of this section at any time within ten years after such person has ceased to be employed as such officer or employee.

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute.

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[*Internal References.*—S.S. Act §§202(u) and 210(a) cite the Internal Security Act of 1950.]

P.L. 82-183, Approved October 20, 1951 (65 Stat. 452)
Revenue Act of 1951

[Jenner Amendment]

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PROHIBITION UPON DENIAL OF SOCIAL SECURITY ACT FUNDS

SEC. 618. [42 U.S.C. 1306a] No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to title I (other than section 3(a)(3) thereof), IV, X, XIV, or XVI (other than section 1603(a)(3) thereof) of the Social Security Act, as amended, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

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[*Internal References.*—S.S. Act titles I, IV, X, XIV, and XVI (State) catchlines and §§402(a), 1002(a), and 1402(a) have footnotes referring to P. L. 82-183.]

P.L. 82-414, Approved June 27, 1952 (66 Stat. 163)

Immigration and Nationality Act

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DEFINITIONS

SECTION 101. [8 U.S.C. 1101] (a) As used in this Act—

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(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * * * *

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(H) an alien[1] * * * (ii) (a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States[2] to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States[3] to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; * * *

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[1] P.L. 101-649, §205(c)(1), struck out "having a residence in a foreign country which he has no intention of abandoning".

[2] P.L. 101-649, §205(e)(2), struck out "who is coming temporarily to the United States (a)" and substituted "(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States".

[3] P.L. 101-649, §205(e)(3), inserted "having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States".

* * * * * * *

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

* * * * * * *

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, and (ii) the alien spouse and minor children of any such alien if accompanying him or following to join him;[4]

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ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES

SEC. 207. [8 U.S.C. 1157]

* * * * * * *

(c)(1) Subject to the numerical limitations established pursuant to subsections (a) and (b), the Attorney General may, in the Attorney General's discretion and pursuant to such regulations as the Attorney General may prescribe, admit any refugee who is not firmly resettled in any foreign country, is determined to be of special humanitarian concern to the United States, and is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act.

(2) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of any refugee who qualifies for admission under paragraph (1) shall, if not otherwise entitled to admission under paragraph (1) and if not a person described in the second sentence of section 101(a)(42), be entitled to the same admission status as such refugee if accompanying, or following to join, such refugee and if the spouse or child is admissible (except as otherwise provided under paragraph (3)) as an immigrant under this Act. Upon the spouse's or child's admission to the United States, such admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged.

(3) The provisions of paragraphs (4), (5), and (7)(A)[5] of section 212(a) shall not be applicable to any alien seeking admission to the United States under this subsection, and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E), or paragraph (3))[6] with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Attorney General shall be in writing and shall be granted only on an individual basis following an investigation. The Attorney General shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

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[4] P.L. 101-649, §207(a)(1), struck out "or".

[5] P.L. 101-649, §603(a)(4)(A), struck out "(14), (15), (20), (21), (25), and (32)" and substituted "(4), (5), and (7)(A)".

[6] P.L. 101-649, §603(a)(4)(B), struck out "(other than paragraph (27), (29), or (33) and other than so much of paragraph (23) as relates to trafficking in narcotics)" and substituted "(other than paragraph (2)(C) or subparagraphs (A), (B), (C), or (E), or paragraph (3))".

(4) The refugee status of any alien (and of the spouse or child of the alien) may be terminated by the Attorney General pursuant to such regulations as the Attorney General may prescribe if the Attorney General determines that the alien was not in fact a refugee within the meaning of section 101(a)(42) at the time of the alien's admission.

* * * * * * *

ASYLUM PROCEDURE

Sec. 208. [8 U.S.C. 1158] (a) The Attorney General shall establish a procedure for an alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, to apply for asylum, and the alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A).

(b) Asylum granted under subsection (a) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that the alien is no longer a refugee within the meaning of section 101(a)(42)(A) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided.

(c) A spouse or child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E)) of an alien who is granted asylum under subsection (a) may, if not otherwise eligible for asylum under such subsection, be granted the same status as the alien if accompanying, or following to join, such alien.

(d) An alien who has been convicted of an aggravated felony, notwithstanding subsection (a), may not apply for or be granted asylum.[7]

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SPECIAL AGRICULTURAL WORKERS

Sec. 210. [8 U.S.C. 1160] (a) Lawful Residence.—

(1) In general.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien meets the following requirements:

(A) Application period.—The alien must apply for such adjustment during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment of this section.

(B) Performance of seasonal agricultural services and residence in the united states.—The alien must establish that he has—

(i) resided in the United States, and

(ii) performed seasonal agricultural services in the United States for at least 90 man-days,

during the 12-month period ending on May 1, 1986. For purposes of the previous sentence, performance of seasonal agricultural services in the United States for more than one employer on any one day shall be counted as performance of services for only 1 man-day.

(C) Admissible as immigrant.—The alien must establish that he is admissible to the United States as an immigrant, except as otherwise provided under subsection (c)(2).

(2) Adjustment to permanent residence.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under paragraph (1) to that of an alien lawfully admitted for permanent residence on the following date:

(A) Group 1.—Subject to the numerical limitation established under subparagraph (C), in the case of an alien who has established, at the time of application for temporary residence under paragraph (1), that the alien performed seasonal agricultural services in the United States for at least 90 man-days during each of the 12-month periods ending on May 1, 1984, 1985, and 1986, the adjustment shall occur on the first day after the end of the one-year period that begins on the later of (I) the date the alien was granted such temporary residence status, or (II) the day after the last day of the application period described in paragraph (1)(A).

(B) Group 2.—In the case of aliens to which subparagraph (A) does not apply, the adjustment shall occur on the day after the last day of the two-year period that begins on the later of (I) the date the alien was granted such temporary resident status, or (II) the day after the last day of the application period described in paragraph (1)(A).

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[7] P.L. 101-649, §515(a)(1), added subsection (d).

(C) Numerical limitation.—Subparagraph (A) shall not apply to more than 350,000 aliens. If more than 350,000 aliens meet the requirements of such subparagraph, such subparagraph shall apply to the 350,000 aliens whose applications for adjustment were first filed under paragraph (1) and subparagraph (B) shall apply to the remaining aliens.

(3) Termination of temporary residence.—(A)[8] During the period of temporary resident status granted an alien under paragraph (1), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(B) Before any alien becomes eligible for adjustment of status under paragraph (2), the Attorney General may deny adjustment to permanent status and provide for termination of the temporary resident status granted such alien under paragraph (1) if—

(i) the Attorney General finds by a preponderance of the evidence that the adjustment to temporary resident status was the result of fraud or willful misrepresentation as set out in section 212(a)(6)(C)(i)[9], or

(ii) the alien commits an act that (I) makes the alien inadmissible to the United States as an immigrant, except as provided under subsection (c)(2), or (II) is convicted of a felony or 3 or more misdemeanors committed in the United States.[10]

(4) Authorized travel and employment during temporary residence.—During the period an alien is in lawful temporary residence status granted under this subsection, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(5) In general.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under paragraph (1), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(b) Applications for Adjustment of Status.—

(1) To whom may be made.—

(A) Within the united states.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(i) with the Attorney General, or

(ii) with a designated entity (designated under paragraph (2)), but only if the applicant consents to the forwarding of the application to the Attorney General.

(B) Outside the united states.—The Attorney General, in cooperation with the Secretary of State, shall provide a procedure whereby an alien may apply for adjustment of status under subsection (a)(1) at an appropriate consular office outside the United States. If the alien otherwise qualifies for such adjustment, the Attorney General shall provide such documentation of authorization to enter the United States and to have the alien's status adjusted upon entry as may be necessary to carry out the provisions of this section.

(2) Designation of entities to receive applications.—For purposes of receiving applications under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, community, farm labor organizations, and associations of agricultural employers, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) Proof of eligibility.—

(A) In general.—An alien may establish that he meets the requirement of subsection (a)(1)(B)(ii) through government employment records, records supplied by employers or collective bargaining organizations, and such other reliable documentation as the alien may provide. The Attorney General shall establish special procedures to credit properly work in cases in which an alien was employed under an assumed name.

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[8] P.L. 101-238, §4(a)(1), inserted "(A)".

[9] P.L. 101-649, §603(a)(5)(A), struck out "212(a)(19)" and substituted "212(a)(6)(C)(i)".

[10] P.L. 101-238, §4(a)(2), added subparagraph (B).

(B) Documentation of work history.—(i) An alien applying for adjustment of status under subsection (a)(1) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of man-days (as required under subsection (a)(1)(B)(ii)).

(ii) If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under clause (i) may be met by securing timely production of those records under regulations to be promulgated by the Attorney General.

(iii) An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described in subsection (a)(1)(B)(ii) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. In such a case, the burden then shifts to the Attorney General to disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence.

(4) Treatment of applications by designated entities.—Each designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(A)(ii) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(5) Limitation on access to information.—Files and records prepared for purposes of this section by designated entities operating under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(6) Confidentiality of information.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application including a determination under subparagraph (a)(3)(B), or for enforcement of paragraph (7).[11]

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) Penalties for false statements in applications.—

(A) Criminal penalty.—Whoever—

(i) files an application for adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or

(ii) creates or supplies a false writing or document for use in making such an application,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(B) Exclusion.—An alien who is convicted of a crime under subparagraph (A) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(19).

(c) Waiver of Numerical Limitations and Certain Grounds for Exclusion.—

(1) Numerical limitations do not apply.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) Waiver of grounds for exclusion.—In the determination of an alien's admissibility under subsection (a)(1)(C)—

(A) Grounds of exclusion not applicable.—The provisions of paragraphs (5), and (7)(A)[12] of section 212(a) shall not apply.

(B) Waiver of other grounds.—

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[11] P.L. 101-238, §4(b), amended subparagraph (A) in its entirety.

[12] P.L. 101-649, §603(a)(5)(B), struck out "(14), (20), (21), (25), and (32)" and substituted "(5) and (7)(A)".

(i) In general.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) Grounds that may not be waived.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B)[13] (relating to criminals).

(II) Paragraph (4)[14] (relating to aliens likely to become public charges).

(III) Paragraph (2)(C)[15] (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof[16].[17]

(C) Special Rule for Determination of Public Charge.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4)[18] if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(d) Temporary Stay of Exclusion or Deportation and Work Authorization for Certain Applicants.—

(1) Before application period.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1) and who can establish a nonfrivolous case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) During application period.—The Attorney General shall provide that in the case of an alien who presents a nonfrivolous application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be excluded or deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(3) No application fees collected by the Immigration and Naturalization Service (INS) pursuant to section 210(d) of the Immigration and Nationality Act (INA) may be used by the INS to offset the costs of the special agricultural worker legalization program until the INS implements the program consistent with the statutory mandate as follows:

(A) During the application period as defined in section 210(a)(1)(A) of the INA the INS may grant temporary admission to the United States, work authorization, and provide an "employment authorized" endorsement or other appropriate work permit to any alien who presents a preliminary application for adjustment of status under subsection (a) at a designated port of entry on the southern land border. An alien who does not enter through a port of entry is subject to deportation and removal as otherwise provided in the INA.

(B) During the application period as defined in section 210(a)(B)(1)(B) of the INA any alien who has filed an application for adjustment of status within the United States as provided in section 210(b)(1)(A) pursuant to the provision of 8 CFR section 210.1(j) is subject to paragraph (2) of this subsection.

(C) A preliminary application is defined as a fully completed and signed application with fee and photographs which contains specific information concerning the performance of qualifying employment in the United States and the documentary evidence which the applicant intends to submit as proof of such employment. The applicant must be otherwise admissible to the United States and must establish to the satisfaction of the examining officer during an interview that his or her claim to eligibility for special agriculture worker status is credible.

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[13] P.L. 101-649, §603(a)(5)(C), struck out "Paragraph (9) and (10)" and substituted "Paragraphs (2)(A) and (2)(B)".

[14] P.L. 101-649, §603(a)(5)(D), struck out "(15)" and substituted "(4)".

[15] P.L. 101-649, §603(a)(5)(E), struck out "(23)" and substituted "(2)(C)".

[16] P.L. 101-649, §603(a)(5)(F), struck out "Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations)" and substituted "Paragraph (3) (relating to security and related grounds), other than subparagraph (E) thereof".

[17] P.L. 101-649, §603(a)(5)(G), struck out subclause (V).

[18] P.L. 101-649, §603(a)(5)(H), struck out "212(a)(15)" and substituted "212(a)(4)".

(e) ADMINSTRATIVE AND JUDICAL REVIEW.—

(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) ADMINISTRATIVE REVIEW.—

(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICAL REVIEW.—

(A) LIMITATION TO REVIEW OF EXCLUSION OR DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of exclusion or deportation under section 106.

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(f) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law, the alien is not eligible for aid under a State plan approved under part A of title IV of the Social Security Act. Notwithstanding the previous sentence, in the case of an alien who would be eligible for aid under a State plan approved under part A of title IV of the Social Security Act but for the previous sentence, the provisions of paragraph (3) of section 245A(h) shall apply in the same manner as they apply with respect to paragraph (1) of such section and, for this purpose, any reference in section 245A(h)(3) to paragraph (1) is deemed a reference to the previous sentence.

(g) TREATMENT OF SPECIAL AGRICULTURAL WORKERS.—For all purposes (subject to subsections (a)(5) and (f)) an alien whose status is adjusted under this section to that of an alien lawfully admitted for permanent residence, such status not having changed, shall be considered to be an alien lawfully admitted for permanent residence (within the meaning of section 101(a)(20)).

(h) SEASONAL AGRICULTURAL SERVICES DEFINED.—In this section, the term "seasonal agricultural services" means the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

DETERMINATION OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS

SEC. 210A. [8 U.S.C. 1161]

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(c) ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS.—

(1) IN GENERAL.—For each fiscal year (beginning with fiscal year 1990 and ending with fiscal year 1993), the Attorney General shall provide for the admission for lawful temporary resident status, or for the adjustment of status to lawful temporary resident status, of a number of aliens equal to the shortage number (if any, determined under subsection (a)) for the fiscal year, or, if less, the numerical limitation established under subsection (b)(1) for the fiscal year. No such alien shall be admitted who is not admissible to the United States as an immigrant, except as otherwise provided under subsection (e).

(2) ALLOCATION OF VISAS.—The Attorney General shall, in consultation with the Secretary of State, provide such process as may be appropriate for aliens to petition for immigrant visas or to adjust status to become aliens lawfully admitted

for temporary residence under this subsection. No alien may be issued a visa as an alien to be admitted under this subsection or may have the alien's status adjusted under this subsection unless the alien has had a petition approved under this paragraph.

(d) RIGHTS OF ALIENS ADMITTED OR ADJUSTED UNDER THIS SECTION.—

(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (c) to that of an alien lawfully admitted for permanent residence at the end of the 3-year period that begins on the date the alien was granted such temporary resident status.

(2) TERMINATION OF TEMPORARY RESIDENCE.—During the period of temporary resident status granted an alien under subsection (c), the Attorney General may terminate such status only upon a determination under this Act that the alien is deportable.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under this section, the alien has the right to travel abroad (including commutation from a residence abroad) and shall be granted authorization to engage in employment in the United States and shall be provided an "employment authorized" endorsement or other appropriate work permit, in the same manner as for aliens lawfully admitted for permanent residence.

(4) IN GENERAL.—Except as otherwise provided in this subsection, an alien who acquires the status of an alien lawfully admitted for temporary residence under subsection (c), such status not having changed, is considered to be an alien lawfully admitted for permanent residence (as described in section 101(a)(20)), other than under any provision of the immigration laws.

(5) EMPLOYMENT IN SEASONAL AGRICULTURAL SERVICES REQUIRED.—

(A) FOR 3 YEARS TO AVOID DEPORTATION.—In order to meet the requirement of this paragraph (for purposes of this subsection and section 241(a)(1)(F)[19]), an alien, who has obtained the status of an alien lawfully admitted for temporary residence under this section, must establish to the Attorney General that the alien has performed 90 man-days of seasonal agricultural services—

(i) during the one-year period beginning on the date the alien obtained such status,

(ii) during the one-year period beginning one year after the date the alien obtained such status, and

(iii) during the one-year period beginning two years after the date the alien obtained such status.

(B) FOR 5 YEARS FOR NATURALIZATION.—Notwithstanding any provision in title III, an alien admitted under this section may not be naturalized as a citizen of the United States under that title unless the alien has performed 90 man-days of seasonal agricultural services in each of 5 fiscal years (not including any fiscal year before the fiscal year in which the alien was admitted under this section).

(C) PROOF.—In meeting the requirements of subparagraphs (A) and (B), an alien may submit such documentation as may be submitted under section 210(b)(3).

(D) ADJUSTMENT OF NUMBER OF MAN-DAYS REQUIRED.—The number of man-days specified in subparagraphs (A) and (B) are subject to adjustment under subsection (a)(8).

(6) DISQUALIFICATION FROM CERTAIN PUBLIC ASSISTANCE.—The provisions of section 245A(h) (other than paragraph (1)(A)(iii)) shall apply to an alien who has obtained the status of an alien lawfully admitted for temporary residence under this section, during the five-year period beginning on the date the alien obtained such status, in the same manner as they apply to an alien granted lawful temporary residence under section 245A; except that, for purposes of this paragraph, assistance furnished under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) or under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) shall not be construed to be financial assistance described in section 245A(h)(1)(A)(i).

(e) DETERMINATION OF ADMISSIBILITY OF ADDITIONAL WORKERS.—In the determination of an alien's admissibility under subsection (c)(1)—

(1) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5) and (7)(A)[20] of section 212(a) shall not apply.

(2) WAIVER OF CERTAIN GROUNDS FOR EXCLUSION.—

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[19] P.L. 101-649, §603(b)(1), struck out "241(a)(20)" and substituted "241(a)(1)(F)".

[20] P.L. 101-649, §603(a)(6)(A), struck out "(14), (20), (21), (25), and (32)" and substituted "(5) and (7)(A)".

(A) In general.—Except as provided in subparagraph (B), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(B) Grounds that may not be waived.—The following provisions of section 212(a) may not be waived by the Attorney General under subparagraph (A):

(i) Paragraphs (2)(A) and (2)(B)[21] (relating to criminals).

(ii) Paragraph (2)(C)[22] (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(iii) Paragraphs and (3)[23] (relating to security grounds), other than subparagraph (E) thereof[24].

(iv) Paragraph (3)(D)[25] (relating to those who assisted in the Nazi persecutions).

(C) Special rule for determination of public charge.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4)[26] if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(3) Medical examination.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

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(g) General Definitions.—In this section:

(1) The term "special agricultural worker" means an individual, regardless of present status, whose status was at any time adjusted under section 210 or who at any time was admitted or had the individual's status adjusted under subsection (c).

(2) The term "seasonal agricultural services" has the meaning given such term in section 210(h).

(3) The term "Director" refers to the Director of the Bureau of the Census.

(4) The term "man-day" means, with respect to seasonal agricultural services, the performance during a calendar day of at least 4 hours of seasonal agricultural services.

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Sec. 212. [8 U.S.C. 1182]

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(d) * * *

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f)[27], in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

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GENERAL CLASSES OF DEPORTABLE ALIENS

Sec. 241. [8 U.S.C. 1251] (a) Classes of Deportable Aliens.—Any alien (including an alien crewman) in the United States shall, upon the order of the Attorney General, be deported if the alien is deportable as being within one or more of the following classes of aliens:

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[21] P.L. 101-649, §603(a)(6)(B), struck out "Paragraphs (9) and (10)" and substituted "Paragraphs (2)(A) and (2)(B)".

[22] P.L. 101-649, §603(a)(6)(C), struck out "(23)" and substituted "(2)(C)".

[23] As in original.

[24] P.L. 101-649, §603(a)(6)(D), struck out "(27), (28), and (29) (relating to national security and members of certain organizations)" and substituted "and (3) (relating to security grounds), other than subparagraph (E) thereof".

[25] P.L. 101-649, §603(a)(6)(E), struck out "(33)" and substituted "(3)(D)".

[26] P.L. 101-649, §603(a)(6)(F), struck out "212(a)(15)" and substituted "212(a)(4)".

[27] P.L. 101-649, §202(b), inserted "or in section 214(f)".

(1) Excludable at time of entry or of adjustment of status or violates status.—

(A) Excludable aliens.—Any alien who at the time of entry or adjustment of status was within one or more of the classes of aliens excludable by the law existing at such time is deportable.

(B) Entered without inspection.—Any alien who entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this Act or any other law of the United States is deportable.

(C) Violated nonimmigrant status or condition of entry.—

(i) Nonimmigrant status violators.—Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status, is deportable.

(ii) Violators of conditions of entry.—Any alien whom the Secretary of Health and Human Services certifies has failed to comply with terms, conditions, and controls that were imposed under section 212(g) is deportable.

(D) Termination of conditional permanent residence.—

(i) In general.—Any alien with permanent resident status on a conditional basis under section 216 (relating to conditional permanent resident status for certain alien spouses and sons and daughters) or under section 216A (relating to conditional permanent resident status for certain alien entrepreneurs, spouses, and children) who has had such status terminated under such section is deportable.

(ii) Exception.—Clause (i) shall not apply in the cases described in section 216(c)(4) (relating to certain hardship waivers).

(E) Smuggling.—

(i) In general.—Any alien who (prior to the date of entry, at the time of entry, or within 5 years of the date of entry) knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is deportable.

(ii) Waiver authorized.—The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) in the case of any alien lawfully admitted for permanent residence if the alien has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(F) Failure to maintain employment.—Any alien who obtains the status of an alien lawfully admitted for temporary residence under section 210A who fails to meet the requirement of section 210A(d)(5)(A) by the end of the applicable period is deportable.

(G) Marriage fraud.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(5)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

(i) the alien obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than 2 years prior to such entry of the alien and which, within 2 years subsequent to any entry of the alien in the United States, shall be judicially annulled or terminated, unless the alien establishes to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws, or

(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's marital agreement which in the opinion of the Attorney General was made for the purpose of procuring the alien's entry as an immigrant.

(H) Waiver authorized for certain misrepresentations.—The provisions of this paragraph relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens described in section 212(a)(6)(C)(i), whether willful or innocent, may, in the discretion of the Attorney General, be waived for any alien (other than an alien described in paragraph (6) or (7)) who—

(i) is the spouse, parent, son, or daughter of a citizen of the United States or of an alien lawfully admitted to the United States for permanent residence; and

(ii) was in possession of an immigrant visa or equivalent document and was otherwise admissible to the United States at the time of such entry except for those grounds of inadmissibility specified under paragraphs (5)(A) and (7)(A) of section 212(a) which were a direct result of that fraud or misrepresentation.

A waiver of deportation for fraud or misrepresentation granted under this subparagraph shall also operate to waive deportation based on the grounds of inadmissibility at entry directly resulting from such fraud or misrepresentation.

(2) CRIMINAL OFFENSES.—

(A) GENERAL CRIMES.—

(i) CRIMES OF MORAL TURPITUDE.—Any alien who—

(I) is convicted of a crime involving moral turpitude committed within five years after the date of entry, and

(II) either is sentenced to confinement or is confined therefor in a prison or correctional institution for one year or longer,

is deportable.

(ii) MULTIPLE CRIMINAL CONVICTIONS.—Any alien who at any time after entry is convicted of two or more crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial, is deportable.

(iii) AGGRAVATED FELONY.—Any alien who is convicted of an aggravated felony at any time after entry is deportable.

(iv) WAIVER AUTHORIZED.—Clauses (i), (ii), and (iii) shall not apply in the case of an alien with respect to a criminal conviction if the alien subsequent to the criminal conviction has been granted a full and unconditional pardon by the President of the United States or by the Governor of any of the several States.

(B) CONTROLLED SUBSTANCES.—

(i) CONVICTION.—Any alien who at any time after entry has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

(ii) DRUG ABUSERS AND ADDICTS.—Any alien who is, or at any time after enty has been, a drug abuser or addict is deportable.

(C) CERTAIN FIREARM OFFENSES.—Any alien who at any time after entry is convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying in violation of any law, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) is deportable.

(D) MISCELLANEOUS CRIMES.—Any alien who at any time has been convicted (the judgment on such conviction becoming final) of, or has been so convicted of a conspiracy to violate—

(i) any offense under chapter 37 (relating to espionage), chapter 105 (relating to sabotage), or chapter 115 (relating to treason and sedition) of title 18, United States Code, for which a term of imprisonment of five or more years may be imposed;

(ii) any offense under section 871 or 960 of title 18, United States Code;

(iii) a violation of any provision of the Military Selective Service Act (50 U.S.C. App. 451 et seq.) or the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.); or

(iv) a violation of section 215 or 278 of this Act,

is deportable.

(3) FAILURE TO REGISTER AND FALSIFICATION OF DOCUMENTS.—

(A) CHANGE OF ADDRESS.—An alien who has failed to comply with the provisions of section 265 is deportable, unless the alien establishes to the satisfaction of the Attorney General that such failure was reasonably excusable or was not willful.

(B) FAILURE TO REGISTER OR FALSIFICATION OF DOCUMENTS.—Any alien who at any time has been convicted—

(i) under section 266(c) of this Act or under section 36(c) of the Alien Registration Act, 1940,

(ii) of a violation of, or a conspiracy to violate, any provision of the Foreign Agents Registration Act of 1938 (22 U.S.C. 611 et seq.), or

(iii) of a violation of, or a conspiracy to violate, section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other entry documents),

is deportable.

(4) Security and related grounds.—

(A) In general.—Any alien who has engaged, is engaged, or at any time after entry has engaged in—

(i) any activity to violate any law of the United States relating to espionage or sabotage or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information,

(ii) any other criminal activity which endangers public safety or national security, or

(iii) any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means,

is deportable.

(B) Terrorist activities.—Any alien who has engaged, is engaged, or at any time after entry has engaged in any terrorist activity (as defined in section 212(a)(3)(B)(iii)) is deportable.

(C) Foreign policy.—

(i) In general.—An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable.

(ii) Exceptions.—The exceptions described in clauses (ii) and (iii) of section 212(a)(3)(C) shall apply to deportability under clause (i) in the same manner as they apply to excluability[28] under section 212(a)(3)(C)(i).

(D) Assisted in nazi persecution or engaged in genocide.—Any alien described in clause (i) or (ii) of sectin 212(a)(3)(E) is deportable.

(5) Public charge.—Any alien who, within five years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.[29]

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ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

Sec. 245A. [8 U.S.C. 1255a] (a) Temporary Resident Status.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

(1) Timely application.—

(A) During application period.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

(B) Application within 30 days of show-cause order.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 12-month period or on the date of the issuance of such order, whichever day is later.

(C) Information included in application.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

(2) Continuous unlawful residence since 1982.—

(A) In general.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

(B) Nonimmigrants.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

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[28] As in original. Should be "excludability".

[29] P.L. 101-649, §602(a), amended subsection (a) in its entirety.

(C) Exchange visitors.—If the alien was at any time a nonimmigrant exhange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof.

(3) Continuous physical presence since enactment.—

(A) In general.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

(B) Treatment of brief, casual, and innocent absences.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

(C) Admissions.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

(4) Admissible as immigrant.—The alien must establish that he—

(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States.

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.—

(1) Adjustment to permanent residence.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence.—The alien must apply for such adjustment during the 2-year period[30] beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

(B) Continuous residence.—

(i) In general.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

(ii) Treatment of certain absences.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

(C) Admissible as immigrant.—The alien must establish that he—

(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

(D) Basic citizenship skills.—

(i) In general.—The alien must demonstrate that he either—

(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) Exception for elderly or developmentally disabled individuals.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older or who is developmentally disabled.

(iii) Relation to naturalization examination.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

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[30] P.L. 101-649, §703(a)(1), struck out "one-year period" and substituted "2-year period".

(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

(C) at the end of the 43rd[31] month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an "employment authorized" endorsement or other appropriate work permit.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

(A) with the Attorney General, or

(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6) or for the preparation of reports to Congress under section 404 of the Immigration Reform and Control Act of 1986,

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[31] P.L. 101-649, §703(a)(2), struck out "thirty-first" and substituted "43rd".

(B) make any publication whereby the information furnished by any particular individual can be identified, or

(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications;

except that the Attorney General may provide, in the Attorney General's discretion, for the furnishing of information furnished under this section in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of title 13, United States Code. Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

(7) APPLICATION FEES.—

(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1). The Attorney General shall provide for an additional fee for filing an application for adjustment under subsection (b)(1) after the end of the first year of the 2-year period described in subsection (b)(1)(A).[32]

(B) USE OF FEES.—The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5) and (7)(A)[33] of section 212(a) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

(I) Paragraphs (2)(A) and (2)(B)[34] (relating to criminals).

(II) Paragraph (4)[35] (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence.

(III) Paragraph (2)(C)[36] (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

(IV) Paragraphs (3) (relating to security and related grounds), other than subparagraph (E) thereof[37]. [38]

Subclause (II) (prohibiting the waiver of section 212(a)(4)[39]) shall not apply to an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

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[32] P.L. 101-649, §703(b) added this sentence.

[33] P.L. 101-649, §603(a)(13)(A), struck out "(14), (20), (21), (25), and (32)" and substituted "(5) and (7)(A)".

[34] P.L. 101-649, §603(a)(13)(B), struck out "Paragraphs (9) and (10)" and substituted "Paragraphs (2)(A) and (2)(B)".

[35] P.L. 101-649, §603(a)(13)(C), struck out "(15)" and substituted "(4)".

[36] P.L. 101-649, §603(a)(13)(D), struck out "(23)" and substituted "(2)(C)".

[37] P.L. 101-649, §603(a)(13)(E), struck out "(27), (28), and (29) (relating to national security and members of certain organizations)" and substituted "(3) (relating to security and related grounds), other than subparagraph (E) thereof".

[38] P.L. 101-649, §603(a)(13)(F), struck out subclause (V).

[39] P.L. 101-649, §603(a)(13)(G), struck out "212(a)(15)" and substituted "212(a)(4)".

(iii) Special rule for determination of public charge.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(4)[40] if the alien demonstates a history of employment in the United States evidencing self-support without receipt of public cash assistance.

(C) Medical examination.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

(e) Temporary Stay of Deportation and Work Authorization for Certain Applicants.—

(1) Before application period.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(2) During application period.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be deported, and

(B) shall be granted authorization to engage in employment in the United States and be provided an "employment authorized" endorsement or other appropriate work permit.

(f) Administrative and Judicial review.—

(1) Administrative and judicial review.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

(2) No review for late filings.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

(3) Administrative review.—

(A) Single level of administrative appellate review.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

(B) Standard for review.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(4) Judicial review.—

(A) Limitation to review of deportation.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

(B) Standard for judicial review.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(g) Implementation of Section.—

(1) Regulations.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

(A) regulations establishing a definition of the term "resided continuously", as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

(B) such other regulations as may be necessary to carry out this section.

(2) Considerations.—In prescribing regulations described in paragraph (1)(A)—

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[40] P.L. 101-649, §603(a)(13)(H), struck out "212(a)(15)" and substituted "212(a)(4)".

(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subparagraph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act),

(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and

(iii) assistance under the Food Stamp Act of 1977; and

(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or

(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

(3) RESTRICTED MEDICAID BENEFITS.—

(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

(i) paragraph (1) shall not apply,

(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

(B) RESTRICTION OF BENEFITS.—

(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term "medical assistance" refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

(A) The National School Lunch Act.

(B) The Child Nutrition Act of 1966.

(C) The Vocational Education Act of 1963.

(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(E) The Headstart-Follow Through Act.

(F) The Job Training Partnership Act.

(G) Title IV of the Higher Education Act of 1965.

(H) The Public Health Service Act.

(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122[41]), assistance shall be continued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.

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AUTHORIZATION FOR PROGRAMS FOR DOMESTIC RESETTLEMENT OF AND ASSISTANCE TO REFUGEES

SEC. 412. [8 U.S.C. 1522]

* * * * * * *

(e) * * *

(5) The Director is authorized to allow for the provision of medical assistance under paragraph (1) to any refugee, during the one-year period after entry, who does not qualify for assistance under a State plan approved under title XIX of the Social Security Act on account of any resources or income requirement of such plan, but only if the Director determines that—

(A) this will (i) encourage economic self-sufficiency, or (ii) avoid a significant burden on State and local governments; and

(B) the refugee meets such alternative financial resources and income requirements as the Director shall establish.

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[41] The Refugee Education Assistance Act of 1980 is Public Law 96-422.

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[*Internal References.*—S.S. Act §§202(n); 210(a); 402(a) and (f); 415(f); 472(a); 1611(c); 1614(a); 1621(f); and 1928(a) cite the Immigration and Nationality Act.]

SELECTED PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986[1]

P.L. 83-591, APPROVED AUGUST 16, 1954 (68A STAT. 3)

* * * * * * *

SEC. 21. EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT.

(a) ALLOWANCE OF CREDIT.—

(1) IN GENERAL.—In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term "applicable percentage" means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000.

(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND EMPLOYMENT-RELATED EXPENSES.—For purposes of this section—

(1) QUALIFYING INDIVIDUAL.—The term "qualifying individual" means—

(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) EMPLOYMENT-RELATED EXPENSES.—

(A) IN GENERAL.—The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) EXCEPTION.—Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) DEPENDENT CARE CENTERS.—Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) DEPENDENT CARE CENTER DEFINED.—For purposes of this paragraph, the term "dependent care center" means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

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[1] The Internal Revenue Code of 1954 has not been codified into positive law; section numbers in title 26, U.S. Code, correspond to sections in the Internal Revenue Code of 1954.

P.L. 99-514, §2(a), provides that the Internal Revenue Title enacted August 14, 1954, may be cited as the "Internal Revenue Code of 1986" and §2(b), provides, except when inappropriate, any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of the Internal Revenue Code of 1954.

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar Limit on Amount Creditable.—The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $2,400 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $4,800 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(d) Earned Income Limitation.—

(1) In general.—Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself.—In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $200 if subsection (c)(1) applies for the taxable year, or

(B) $400 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special Rules.—For purposes of this section—

(1) Maintaining household.—An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) Married couples must file joint return.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status.—An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart.—If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.—If—

(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals.—No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(c) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 151(c)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student.—The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization.—The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

(9) Identifying information required with respect to service provider.—No credit shall be allowed under subsection (a) for any amount paid to any person unless—

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(f) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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SEC. 32. EARNED INCOME.

(a) Allowance of Credit.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

(1) the basic earned income credit, and

(2) the health insurance credit.[2]

(b) Computation of Credit.—For purposes of this section—

(1) Basic earned income credit.—

(A) In general.—The term "basic earned income credit" means an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed $5,714.

(B) Limitation.—The amount of the basic earned income credit allowable to a taxpayer for any taxable year shall not exceed the excess (if any) of—

(i) the credit percentage of $5,714, over

(ii) the phaseout percentage of so much of the adjusted gross income (or, if greater the earned income) of the taxpayer for the taxable year as exceeds $9,000.

(C) Percentages.—For purposes of this paragraph—

(i) In general.—Except as provided in clause (ii), the percentages shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	23	16.43
2 or more qualifying children	25	17.86

(ii) Transition percentages.—

(I) For taxable years beginning in 1991, the percentages are:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	16.7	11.93
2 or more qualifying children	17.3	12.36

(II) For taxable years beginning in 1992, the percentages are:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	17.6	12.57
2 or more qualifying children	18.4	13.14

(III) For taxable years beginning in 1993, the percentages are:

In the case of an eligible individual with:	The credit Percentage is:	The phaseout percentage is:
1 qualifying child	18.5	13.21

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[2] P.L. 101-508, §11111(a), amended subsection (a) in its entirety.

In the case of an eligible individual with:	The credit Percentage is:	The phaseout percentage is:
2 or more qualifying children	19.5	13.93

(D) Supplemental young child credit.—In the case of a taxpayer with a qualifying child who has not attained age 1 as of the close of the calendar year in which or with which the taxable year of the taxpayer ends—

(i) the credit percentage shall be increased by 5 percentage points, and

(ii) the phaseout percentage shall be increased by 3.57 percentage points.

If the taxpayer elects to take a child into account under this subparagraph, such child shall not be treated as a qualifying individual under section 21.

(2) Health insurance credit.—

(A) In general.—The term "health insurance credit" means an amount determined in the same manner as the basic earned income credit except that—

(i) the credit percentage shall be equal to 6 percent, and

(ii) the phaseout percentage shall be equal to 4.285 percent.

(B) Limitation based on health insurance costs.—The amount of the health insurance credit determined under subparagraph (A) for any taxable year shall not exceed the amounts paid by the taxpayer during the taxable year for insurance coverage—

(i) which constitutes medical care (within the meaning of section 213(d)(1)(C)), and

(ii) which includes at least 1 qualifying child.

For purposes of this subparagraph, the rules of section 213(d)(6) shall apply.

(C) Subsidized expenses.—A taxpayer may not take into account under subparagraph (B) any amount to the extent that—

(i) such amount is paid, reimbursed, or subsidized by the Federal Government, a State or local government, or any agency or instrumentality thereof; and

(ii) the payment, reimbursement, or subsidy of such amount is not includible in the gross income of the recipient.[3]

(c) Definitions and Special Rules.—For purposes of this section—

(1) Eligible individual.—

(A) In general.—The term "eligible individual" means an individual who has a qualifying child for the taxable year.

(B) Qualifying child ineligible.—If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) 2 or more eligible individuals.—If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child.

(D) Exception for individual claiming benefits under section 911.—The term "eligible individual" does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

(2) Earned income.—

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

(3) Qualifying child.—

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[3] P.L. 101-508, §11111(b), amended subsection (b) in its entirety.

(A) In general.—The term "qualifying child" means, with respect to any taxpayer for any taxable year, an individual—

(i) who bears a relationship to the taxpayer described in subparagraph (B),

(ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(iii) who meets the age requirements of subparagraph (C), and

(iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).

(B) Relationship test.—

(i) In general.—An individual bears a relationship to the taxpayer described in this subparagraph if such individual is—

(I) a son or daughter of the taxpayer, or a descendant of either,

(II) a stepson or stepdaughter of the taxpayer, or

(III) an eligible foster child of the taxpayer.

(ii) Married children.—Clause (i) shall not apply to any individual who is married as of the close of the taxpayer's taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for paragraph (2) or (4) of section 152(e)).

(iii) Eligible foster child.—For purposes of clause (i)(III), the term "eligible foster child" means an individual not described in clause (i)(I) or (II) who—

(I) the taxpayer cares for as the taxpayer's own child, and

(II) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

(iv) Adoption.—For purposes of this subparagraph, a child who is legally adopted, or who is placed with the taxpayer by an authorized placement agency for adoption by the taxpayer, shall be treated as a child by blood.

(C) Age requirements.—An individual meets the requirements of this subparagraph if such individual—

(i) has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins,

(ii) is a student (as defined in section 151(c)(4)) who has not attained the age of 24 as of the close of such calendar year, or

(iii) is permanently and totally disabled (as defined in section 22(e)(3)) at any time during the taxable year.

(D) Identification requirements.—

(i) In general.—The requirements of this subparagraph are met if—

(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer's taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.

(ii) Insurance policy number.—In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i).

(iii) Other methods.—The Secretary may prescribe other methods for providing the information described in clause (i) or (ii).

(E) Abode must be in the united states.—The requirements of subparagraphs (A)(ii) and (B)(iii)(II) shall be met only if the principal place of abode is in the United States.[4]

(d) Married Individuals.—In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable Year Must be Full Taxable Year.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of Credit To Be Determined Under Tables.—

(1) In general.—The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

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[4] P.L. 101-508, §11111(c), amended subsection (c) in its entirety.

(2) Requirements for tables.—The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(g) Coordination With Advance Payments of Earned Income Credit.—

(1) Recapture of excess advance payments.—If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed.—Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(h) Reduction of Credit to Taxpayers Subject to Alternative Minimum Tax.—The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year.

(i) Inflation Adjustments.—

(1) In general.—In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting "calendar year 1984" for "calendar year 1989[5]" in subparagraph (B) thereof.

(2) Definitions, etc.—For purposes of paragraph (1)—

(A) Applicable calendar year.—The term "applicable calendar year" means—

(i) 1986 in the case of the dollar amounts referred to in clause (i)[6] of subparagraph (B), and

(ii) 1987 in the case of the dollar amount referred to in clause (ii)[7] of subparagraph (B).

(B) Dollar amounts.—The dollar amounts referred to in this subparagraph are—

(i) the $5,714 dollar amounts contained in subsection (b)(1), and

(ii) the $9,000 amount contained in subsection (b)(1)(B)(ii).[8]

(3) Rounding.—If any dollar amount after being increased under paragraph (1) is not a multiple of $10, such dollar amount shall be rounded to the nearest multiple of $10 (or, if such dollar amount is a multiple of $5, such dollar amount shall be increased to the next higher multiple of $10).

(j) Coordination With Certain Means-Tested Programs.—For purposes of—

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food Stamp Act of 1977,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).[9]

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[SEC. 59B. Repealed.[10]]

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SEC. 74. PRIZES AND AWARDS.

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(c) Exception for Certain Employee Achievement Awards.—

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[5] P.L. 101-508, §11101(d)(1)(B), struck out "1987" and substituted "1989".
[6] P.L. 101-508, §11111(e)(1), struck out "or (ii)".
[7] P.L. 101-508, §11111(e)(2), struck out "clause (iii)" and substituted "clause (ii)".
[8] P.L. 101-508, §11111(e)(3), amended subparagraph (B) in its entirety.
[9] P.L. 101-508, §11111(b), added subsection (j).
[10] P.L. 101-234, §102(a); 103 Stat. 1980.

(1) In general.—Gross income shall not include the value of an employee achievement award (as defined in section 274(j)) received by the taxpayer if the cost to the employer of the employee achievement award does not exceed the amount allowable as a deduction to the employer for the cost of the employee achievement award.

(2) Excess deduction award.—If the cost to the employer of the employee achievement award received by the taxpayer exceeds the amount allowable as a deduction to the employer, then gross income includes the greater of—

(A) an amount equal to the portion of the cost to the employer of the award that is not allowable as a deduction to the employer (but not in excess of the value of the award), or

(B) the amount by which the value of the award exceeds the amount allowable as a deduction to the employer.

The remaining portion of the value of such award shall not be included in the gross income of the recipient.

(3) Treatment of tax-exempt employers.—In the case of an employer exempt from taxation under this subtitle, any reference in this subsection to the amount allowable as a deduction to the employer shall be treated as a reference to the amount which would be allowable as a deduction to the employer if the employer were not exempt from taxation under this subtitle.

(4) Cross reference.—

For provisions excluding certain de minimis fringes from gross income, see section 132(e).

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SEC. 86. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) In General.—Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(1) one-half of the social security benefits received during the taxable year, or

(2) one-half of the excess described in subsection (b)(1).

(b) Taxpayers to Whom Subsection (a) Applies.—

(1) In general.—A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) Modified adjusted gross income.—For purposes of this subsection, the term "modified adjusted gross income" means adusted[11] gross income—

(A) determined without regard to this section and sections 135, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base Amount.—For purposes of this section, the term "base amount" means—

(1) except as otherwise provided in this subsection, $25,000,

(2) $32,000, in the case of a joint return, and

(3) zero, in the case of a taxpayer who—

(A) is married at the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

(B) does not live apart from his spouse at all times during the taxable year.

(d) Social Security Benefit.—

(1) In general.—For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.

(2) Adjustment for repayments during year.—

(A) In general.—For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

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[11] As in original. Should be "adjusted".

(B) Denial of deduction.—If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen's compensation benefits substituted for social security benefits.—For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit.—For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means—

(A) the amount of the annuity under the Railroad Retirement Act of 1974 equal to the amount of the benefit to which the taxpayer would have been entitled under the Social Security Act if all of the service after December 31, 1936, of the employee (on whose employment record the annuity is being paid) had been included in the term "employment" as defined in the Social Security Act, and

(B) a monthly annuity amount under section 3(f)(3) of the Railroad Retirement Act of 1974.

(5) Effect of early delivery of benefit checks.—For purposes of subsection (a), in any case where section 708 of the Social Security Act causes social security benefit checks to be delivered before the end of the calendar month for which they are issued, the benefits involved shall be deemed to have been received in the succeeding calendar month.

(e) Limitation on Amount Included Where Taxpayer Receives Lump-Sum Payment.—

(1) Limitation.—If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules.—

(A) Year to which benefit attributable.—For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election.—An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as Pension or Annuity For Certain Purposes.—For purposes of—

(1) section 22(c)(3)(A) (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation), and

(4) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

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[SEC. 89. Repealed.[12]]

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SEC. 107. RENTAL VALUE OF PARSONAGES.

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

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[12] P.L. 101-140, §202(a); 103 Stat. 830.

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SEC. 117. QUALIFIED SCHOLARSHIPS.

(a) General Rule.—Gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization described in section 170(b)(1)(A)(ii).

(b) Qualified Scholarship.—For purposes of this section—

(1) In general.—The term "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses.

(2) Qualified tuition and related expenses.—For purposes of paragraph (1), the term "qualified tuition and related expenses" means—

(A) tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii), and

(B) fees, books, supplies, and equipment required for courses of instruction at such an educational organization.

(c) Limitation.—Subsections (a) and (d) shall not apply to that portion of any amount received which represents payment for teaching, research, or other services by the student required as a condition for receiving the qualified scholarship or qualified tuition reduction.

(d) Qualified Tuition Reduction.—

(1) In general.—Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction.—For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

(3) Reduction must not discriminate in favor of highly compensated, etc.—Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

[(4) Stricken.[13]]

(5) Special rules for teaching and research assistants.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase "(below the graduate level)".

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SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

(a) Meals and Lodging Furnished to Employee, His Spouse, and His Dependents, Pursuant to Employment.—There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special Rules.—For purposes of subsection (a)—

(1) Provisions of employment contract or state statute not to be determinative.—In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals.—In determining whether meals are furnished for the convenience of the employer, the

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[13] P.L. 101-140, §203(a)(1); 103 Stat. 830.

fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals.—

(A) In general.—If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A).—Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(c) Employees Living in Certain Camps.—

(1) In general.—In the case of an individual who is furnished lodging in a camp located in a foreign country by or on behalf of his employer, such camp shall be considered to be part of the business premises of the employer.

(2) Camp.—For purposes of this section, a camp constitutes lodging which is—

(A) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(B) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(C) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(d) Lodging Furnished by Certain Educational Institutions to Employees.—

(1) In general.—In the case of an employee of an educational institution, gross income shall not include the value of qualified campus lodging furnished to such employee during the taxable year.

(2) Exception in cases of inadequate rent.—Paragraph (1) shall not apply to the extent of the excess of—

(A) the lesser of—

(i) 5 percent of the appraised value of the qualified campus lodging, or

(ii) the average of the rentals paid by individuals (other than employees or students of the educational institution) during such calendar year for lodging provided by the educational institution which is comparable to the qualified campus lodging provided to the employee, over

(B) the rent paid by the employee for the qualified campus lodging during such calendar year.

The appraised value under subparagraph (A)(i) shall be determined as of the close of the calendar year in which the taxable year begins, or, in the case of a rental period not greater than 1 year, at any time during the calendar year in which such period begins.

(3) Qualified campus lodging.—For purposes of this subsection, the term "qualified campus lodging" means lodging to which subsection (a) does not apply and which is—

(A) located on, or in the proximity of, a campus of the educational institution, and

(B) furnished to the employee, his spouse, and any of his dependents by or on behalf of such institution for use as a residence.

(4) Educational institution.—For purposes of this paragraph, the term "educational institution" means an institution described in section 170(b)(1)(A)(ii).

SEC. 120. AMOUNTS RECEIVED UNDER QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) Exclusion by Employee for Contributions and Legal Services Provided by Employer.—Gross income of an employee, his spouse, or his dependents, does not include—

(1) amounts contributed by an employer on behalf of an employee, his spouse, or his dependents under a qualified group legal services plan (as defined in subsection (b)); or

(2) the value of legal services provided, or amounts paid for legal services, under a qualified group legal services plan (as defined in subsection (b)) to, or with respect to, an employee, his spouse, or his dependents.

No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds $70.

(b) QUALIFIED GROUP LEGAL SERVICES PLAN.—For purposes of this section, a qualified group legal services plan is a separate written plan of an employer for the exclusive benefit of his employees or their spouses or dependents to provide such employees, spouses, or dependents with specified benefits consisting of personal legal services through prepayment of, or provision in advance for, legal fees in whole or in part by the employer, if the plan meets the requirements of subsection (c).[14]

(c) REQUIREMENTS.—

(1) DISCRIMINATION.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)).

(2) ELIGIBILITY.—The plan shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are described in paragraph (1). For purposes of this paragraph, there shall be excluded from consideration employees not included in the plan who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that group legal services plan benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.[15]

(3) CONTRIBUTION LIMITATION.—Not more than 25 percent of the amounts contributed under the plan during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) NOTIFICATION.—The plan shall give notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of the status of a qualified group legal services plan.

(5) CONTRIBUTIONS.—Amounts contributed under the plan shall be paid only (A) to insurance companies, or to organizations or persons that provide personal legal services, or indemnification against the cost of personal legal services, in exchange for a prepayment or payment of a premium, (B) to organizations or trusts described in section 501(c)(20), (C) to organizations described in section 501(c) which are permitted by that section to receive payments from an employer for support of one or more qualified group legal services plan or plans, except that such organizations shall pay or credit the contribution to an organization or trust described in section 501(c)(20), (D) as prepayments to providers of legal services under the plan, or (E) a combination of the above.

(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) EMPLOYEE.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(2) EMPLOYER.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(3) ALLOCATIONS.—Allocations of amounts contributed under the plan shall be made in accordance with regulations prescribed by the Secretary and shall take into account the expected relative utilization of benefits to be provided from such contributions or plan assets and the manner in which any premium or other charge was developed.

(4) DEPENDENT.—The term "dependent" has the meaning given to it by section 152.

(5) EXCLUSIVE BENEFIT.—In the case of a plan to which contributions are made by more than one employer, in determining whether the plan is for the exclusive benefit of an employer's employees or their spouses or dependents, the employees of any employer who maintains the plan shall be considered to be the employees of each employer who maintains the plan.

(6) ATTRIBUTION RULES.—For purposes of this section—

(A) ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)), and

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[14] P.L. 101-140, §203(a)(1), amended subsection (b) in its entirety.

[15] P.L. 101-140, §203(a)(1), struck out "For purposes of this paragraph, there may* be excluded from consideration employees who may be** excluded from consideration under section 89(h).", and substituted this sentence.

*P.L. 101-140, §203(a)(2), struck out "shall" and substituted "may".

**P.L. 101-140, §203(a)(2), struck out "are" and substituted "may be".

(B) the interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(7) TIME OF NOTICE TO SECRETARY.—A plan shall not be a qualified group legal services plan for any period prior to the time notification was provided to the Secretary in accordance with subsection (c)(4), if such notice is given after the time prescribed by the Secretary by regulations for giving such notice.

(e) TERMINATION.—This section and section 501(c)(20) shall not apply to taxable years beginning after December 31, 1991[16].

* * * * * * *

SEC. 125. CAFETERIA PLANS.[17]

(a) IN GENERAL.—Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) EXCEPTION FOR HIGHLY COMPENSATED PARTICIPANTS AND KEY EMPLOYEES.—

(1) HIGHLY COMPENSATED PARTICIPANTS.—In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) KEY EMPLOYEES.—In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the last sentence of subsection (f).

(3) YEAR OF INCLUSION.—For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) DISCRIMINATION AS TO BENEFITS OR CONTRIBUTIONS.—For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where qualified benefits and total benefits (or employer contributions allocable to qualified benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) CAFETERIA PLAN DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "cafeteria plan" means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and qualified benefits.

(2) DEFERRED COMPENSATION PLANS EXCLUDED.—

(A) IN GENERAL.—The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(B) EXCEPTION FOR CASH AND DEFERRED ARRANGEMENTS.—Subparagraph (A) shall not apply to a profit-sharing or stock bonus plan or rural cooperative plan (within the meaning of section 401(k)(7)) which includes a qualified cash or deferred arrangement (as defined in section 401(k)(2)) to the extent of amounts which a covered employee may elect to have the employer pay as contributions to a trust under such plan on behalf of the employee.

(C) EXCEPTION FOR CERTAIN PLANS MAINTAINED BY EDUCATIONAL INSTITUTIONS.—Subparagraph (A) shall not apply to a plan maintained by an educational organization described in section 170(b)(1)(A)(ii) to the extent of amounts which a covered employee may elect to have the employer pay as contributions for post-retirement group life insurance if—

(i) all contributions for such insurance must be made before retirement, and

(ii) such life insurance does not have a cash surrender value at any time.

For purposes of section 79, any life insurance described in the preceding sentence shall be treated as group-term life insurance.[18]

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[16] P.L. 101-239, §7102(a)(1), struck out "ending after December 31, 1988" and substituted "beginning after September 30, 1990".

P.L. 101-508, §11404(a), struck out "September 30, 1990" and substituted "December 31, 1991".

[17] P.L. 101-140, §203(a)(1), amended §125 in its entirety.

[18] P.L. 101-140, §203(b)(2), amended paragraph (2) in its entirety.

(e) Highly Compensated Participant and Individual Defined.—For purposes of this section—

(1) Highly compensated participant.—The term "highly compensated participant" means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual.—The term "highly compensated individual" means an individual who is described in subparagraphs (A), (B), (C), or (D) of paragraph (1).

(f) Qualified Benefits Defined.—For purposes of this section, the term "qualified benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117,[19] 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations.

(g) Special Rules.—

(1) Collectively bargained plan not considered discriminatory.—For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers.

(2) Health benefits.—For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory.—For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in section 410(b)(2)(A)(i)[20], and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the employment requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the employment requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups, etc.—All employees who are treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Cross References.—

For reporting and recordkeeping requirements, see section 6039D.

(i) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

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SEC. 127. EDUCATIONAL ASSISTANCE PROGRAMS.

(a) Exclusion From Gross Income.—

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[19] P.L. 101-508, §11801(c)(3), struck out "section 117, 124," and substituted "section 117,".

[20] P.L. 101-140, §203(a)(3), struck out "subparagraph (B) of section 410(b)(1)" and substituted "section 410(b)(2)(A)(i)".

(1) In general.—Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,250 maximum exclusion.—If, but for this paragraph, this section would exclude from gross income more than $5,250 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,250 of such assistance so furnished.

(b) Educational Assistance Program.—

(1) In general.—For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.[21]

(2) Eligibility.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.[22]

(3) Principal shareholders or owners.—Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative.—A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required.—A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees.—Reasonable notification of the availability and terms of the program must be provided to eligible employees.[23]

(c) Definitions; Special Rules.—For purposes of this section—

(1) Educational assistance.—The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.[24]

(2) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

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[21] P.L. 101-140, §203(a)(1), amended paragraph (1) in its entirety.

[22] P.L. 101-140, §203(a)(1), struck out "For purposes of this paragraph, there may* be excluded from consideration employees who may be** excluded from consideration under section 89(h).", and substituted this sentence.

*P.L. 101-140, §203(a)(2), struck out "shall" and substituted "may".

**P.L. 101-203(a)(2), struck out "are" and substituted "may be".

[23] P.L. 101-140, §203(a)(1), restored paragraph (6).

[24] P.L. 101-508, §11403(b), struck out "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.".

(B) INTEREST IN UNINCORPORATED TRADE OR BUSINESS.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) CERTAIN TESTS NOT APPLICABLE.—An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) RELATIONSHIP TO CURRENT LAW.—This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) DISALLOWANCE OF EXCLUDED AMOUNTS AS CREDIT OR DEDUCTION.—No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section.

⟦(8) Stricken.[25]⟧

(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1991[26].

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SEC. 129. DEPENDENT CARE ASSISTANCE PROGRAMS.

(a) EXCLUSION.—

(1) IN GENERAL.—Gross income of an employee does not include amounts paid or incurred by the employer for dependent care assistance provided to such employee if the assistance is furnished pursuant to a program which is described in subsection (d).

(2) LIMITATION OF EXCLUSION.—

(A) IN GENERAL.—The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed $5,000 ($2,500 in the case of a separate return by a married individual).

(B) YEAR OF INCLUSION.—The amount of any excess under subparagraph (A) shall be included in gross income in the taxable year in which the dependent care services were provided (even if payment of dependent care assistance for such services occurs in a subsequent taxable year).

(C) MARITAL STATUS.—For purposes of this paragraph, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).[27]

(b) EARNED INCOME LIMITATION.—

(1) IN GENERAL.—The amount excluded from the income of an employee under subsection (a) for any taxable year shall not exceed—

(A) in the case of an employee who is not married at the close of such taxable year, the earned income of such employee for such taxable year, or

(B) in the case of an employee who is married at the close of such taxable year, the lesser of—

(i) the earned income of such employee for such taxable year, or

(ii) the earned income of the spouse of such employee for such taxable year.

(2) SPECIAL RULE FOR CERTAIN SPOUSES.—For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student or incapable of caring for himself.

(c) PAYMENTS TO RELATED INDIVIDUALS.—No amount paid or incurred during the taxable year of an employee by an employer in providing dependent care assistance to such employee shall be excluded under subsection (a) if such amount was paid or incurred to an individual—

(1) with respect to whom, for such taxable year, a deduction is allowable under section 151(c) (relating to personal exemptions for dependents) to such employee or the spouse of such employee, or

(2) who is a child of such employee (within the meaning of section 151(c)(3)) under the age of 19 at the close of such taxable year.

(d) DEPENDENT CARE ASSISTANCE PROGRAM.—

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[25] P.L. 101-239, §7814(a), struck out paragraph (8).

[26] P.L. 101-239, §7101(a)(1), struck out "December 31, 1988" and substituted "September 30, 1990".
P.L. 101-508, §11403(a), struck out "September 30, 1990" and substituted "December 31, 1991".

[27] P.L. 101-239, §7811(h)(2), struck out "For purposes of the preceding sentence, marital status shall be determined under the rules of paragraphs (3) and (4) of section 21(e).".

(1) In general.—For purposes of this section a dependent care assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with dependent care assistance which meets the requirements of paragraphs (2) through (8)[28] of this subsection.[29] If any plan would qualify as a dependent care assistance program but for a failure to meet the requirements of this subsection, then, notwithstanding such failure, such plan shall be treated as a dependent care assistance program in the case of employees who are not highly compensated employees.[30]

(2) Discrimination.—The contributions or benefits provided under the plan shall not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)) or their dependents.

(3) Eligibility.—The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees described in paragraph (2), or their dependents.[31]

(4) Principal shareholders or owners.—Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(5) No funding required.—A program referred to in paragraph (1) is not required to be funded.

(6) Statement of expenses.—The plan shall furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to such employee during the previous calendar year.

(8)[32] Benefits.—

(A) In general.—A plan meets the requirements of this paragraph if the average benefits provided to employees who are not highly compensated employees under all plans of the employer is at least 55 percent of the average benefits provided to highly compensated employees under all plans of the employer.

(B) Salary reduction agreements.—For purposes of subparagraph (A), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employees whose compensation is less than $25,000. For purposes of this subparagraph, the term "compensation" has the meaning given such term by section 414(q)(7), except that, under rules prescribed by the Secretary, an employer may elect to determine compensation on any other basis which does not discriminate in favor of highly compensated employees.

(9) Excluded employees.—For purposes of paragraphs (3) and (8), there shall be excluded from consideration—

(A) subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed 1 year of service (as defined in section 410(a)(3)), and

(B) employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement which the Secretary finds to be a collective bargaining agreement between employee representatives and 1 or more employees, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.[33]

(e) Definitions and Special Rules.—For purposes of this section—

(1) Dependent care assistance.—The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee

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[28] P.L. 101-140, §204(a)(3)(B), struck out "(7)" and substituted "(8)".

[29] P.L. 101-140, §203(a)(1), amended paragraph (1) in its entirety.

[30] P.L. 101-140, §204(a)(1), added this sentence.

[31] P.L. 101-140, §203(a)(1), struck out "For purposes of this paragraph, there may be excluded from consideration employees who may be excluded from consideration under section 89(h).*" and substituted "For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.**".

*P.L. 101-140, §203(a)(2), repealed the amendment made by P.L. 100-647, §1011B(a)(31)(A)(i).

**P.L. 101-140, §204(a)(2)(B), struck out the sentence added by P.L. 101-140, §203(a)(1).

[32] P.L. 101-140, §203(a)(2), repealed the former paragraph (8).
P.L. 101-140, §204(a)(3)(A), redesignated paragraph (7) as paragraph (8).

[33] P.L. 101-140, §204(a)(2), added this paragraph (9).

would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income.—The term "earned income" shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

(3) Employee.—The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3).

(5) Attribution rules.—

(A) Ownership of stock.—Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business.—The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(6) Utilization test not applicable.—A dependent care assistance program shall not be held or considered to fail to meet any requirements of subsection (d) (other than paragraphs (4) and (8)[34] thereof) merely because of utilization rates for the different types of assistance made available under the program.

(7) Disallowance of excluded amounts as credit or deduction.—No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from the gross income of the employee by reason of this section.

(8) Treatment of onsite facilities.—In the case of an onsite facility maintained by an employer, except to the extent provided in regulations, the amount of dependent care assistance provided to an employee excluded with respect to any dependent shall be based on—

(A) utilization of the facility by a dependent of the employee, and

(B) the value of the services provided with respect to such dependent.

(9) Identifying information required with respect to service provider.—No amount paid or incurred by an employer for dependent care assistance provided to an employee shall be excluded from the gross income of such employee unless—

(A) the name, address, and taxpayer identification number of the person performing the services are included on the return to which the exclusion relates, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return to which the exclusion relates.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

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SEC. 132. CERTAIN FRINGE BENEFITS.

(a) Exclusion From Gross Income.—Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,
(2) qualified employee discount,
(3) working condition fringe, or
(4) de minimis fringe.

(b) No-Additional-Cost Service Defined.—For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified Employee Discount Defined.—For purposes of this section—

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[34] P.L. 101-140, §204(a)(3)(C), struck out "(7)" and substituted "(8)".

(1) **Qualified employee discount.**—The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) **Gross profit percentage.**—

(A) **In general.**—The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) **Determination of gross profit percentage.**—Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) **Employee discount defined.**—The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided by the employer to an employee for use by such employee, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) **Qualified property or services.**—The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming[35] services.

(d) **Working Condition Fringe Defined.**—For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) **De Minimis Fringe Defined.**—For purposes of this section—

(1) **In General.**—The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) **Treatment of certain eating facilities.**—The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

(f) **Certain Individuals Treated as Employees for Purposes of Subsections (a)(1) and (2).**—For purposes of paragraphs (1) and (2) of subsection (a)—

(1) **Retired and disabled employees and surviving spouse of employee treated as employee.**—With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) **Spouse and dependent children.**—

(A) **In general.**—Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

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[35] As in original. Should be "performing".

(B) Dependent child.—For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 151(c)(3)[36]) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased and who has not attained age 25.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(3) Special rule for parents in the case of air transportation.—Any use of air transportation by a parent of an employee (determined without regard to paragraph (1)(B)) shall be treated as use by the employee.

(g) Reciprocal Agreements.—For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(1) such service is provided pursuant to a written agreement between such employers, and

(2) neither of such employers incurs any substantial additional costs (including foregone revenue) in providing such service or pursuant to such agreement.

(h) Special Rules.—

(1) Exclusions under subsection (a)(1) and (2) apply to highly compensated employees[37] only if no discrimination.—Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.[38]

(2) Special rule for leased sections of department stores.—

(A) In general.—For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store.—For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen.—

(A) In general.—For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use.—For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) Parking.—The term "working condition fringe" includes parking provided to an employee on or near the business premises of the employer.

(5) On-premises gyms and other athletic facilities.—

(A) In general.—Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility.—For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

(6) Special rule for affiliates of airlines.—

(A) In general.—If—

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[36] P.L. 101-239, §7841(d)(19), struck out "151(e)(3)" and substituted "151(c)(3)".

[37] P.L. 101-239, §7841(d)(7), struck out "officers, etc.," and substituted highly compensated employees".

[38] P.L. 101-140, §203(a)(1), struck out "For purposes of this paragraph and subsection (e), there may[*] be excluded from consideration employees who may be[**] excluded from consideration under section 89(h).".

[*] P.L. 101-140, §203(a)(2), struck out "shall" and substituted "may".

[**] P.L. 101-140, §203(a)(2), struck out "are" and substituted "may be".

(i) a qualified affiliate is a member of an affiliated group another member of which operates an airline, and

(ii) employees of the qualified affiliate who are directly engaged in providing airline-related services are entitled to no-additional-cost service with respect to air transportation provided by such other member,

then, for purposes of applying paragraph (1) of subsection (a) to such no-additional-cost service provided to such employees, such qualified affiliate shall be treated as engaged in the same line of business as such other member.

(B) Qualified affiliate.—For purposes of this paragraph, the term "qualified affiliate" means any corporation which is predominantly engaged in airline-related services.

(C) Airline-related services.—For purposes of this paragraph, the term "airline-related services" means any of the following services provided in connection with air transportation:

(i) Catering.

(ii) Baggage handling.

(iii) Ticketing and reservations.

(iv) Flight planning and weather analysis.

(v) Restaurants and gift shops located at an airport.

(vi) Such other similar services provided to the airline as the Secretary may prescribe.

(D) Affiliated group.—For purposes of this paragraph, the term "affiliated group" has the meaning given such term by section 1504(a).

(7) Highly compensated employee.—For purposes of this section, the term "highly compensated employee" has the meaning given such term by section 414(q).

(8) Air cargo.—For purposes of subsection (b), the transportation of cargo by air and the transportation of passengers by air shall be treated as the same service.

(9) Application of section to otherwise taxable employer-provided educational assistance.—Amounts which would be excludible from gross income under section 127 but for subsection (a)(2) thereof or the last sentence of subsection (c)(1) thereof shall be excluded from gross income under this section if (and only if) such amounts are a working condition fringe.[39]

(i) Customers Not To Include Employees.—For purposes of this section (other than subsection (c)(2)), the term "customers" shall only include customers who are not employees.

(j) Section Not To Apply to Fringe Benefits Expressly Provided for Elsewhere.—This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(k) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

(b) Charitable Contributions and Gifts Excepted.—No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

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[39] P.L. 101-239, §7101(b), added paragraph (9).

(c) ILLEGAL BRIBES, KICKBACKS, AND OTHER PAYMENTS.—

(1) ILLEGAL PAYMENTS TO GOVERNMENT OFFICIALS OR EMPLOYEES.—No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) OTHER ILLEGAL PAYMENTS.—No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) KICKBACKS, REBATES, AND BRIBES UNDER MEDICARE AND MEDICAID.—No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) CAPITAL CONTRIBUTIONS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION.—For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) APPEARANCES, ETC., WITH RESPECT TO LEGISLATION.—

(1) IN GENERAL.—The deduction allowed by subsection (a) shall include all the ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

(A) in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(B) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by such organization.

(2) LIMITATION.—The provisions of paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred (whether by way of contribution, gift, or otherwise)—

(A) for participation in, or intervention in, any political campaign on behalf of any candidate for public office, or

(B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(f) FINES AND PENALTIES.—No deduction shall be allowed under subsection (a) for any fine or similar penalty paid to a government for the violation of any law.

(g) Treble Damage Payments under the Antitrust Laws.—If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

The preceding sentence shall not apply with respect to any conviction or plea before January 1, 1970, or to any conviction or plea on or after such date in a new trial following an appeal of a conviction before such date.

(i)[40] State Legislators' Travel Expenses Away From Home.—

(1) In general.—For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) Legislative days.—For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) Election.—An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) Section not to apply to legislators who reside near capitol.—For taxable years beginning after December 31, 1980, this subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

[(i) Repealed.[41]]

(j) Certain Foreign Advertising Expenses.—

(1) In general.—No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking.—For purposes of paragraph (1), the term "broadcast undertaking" includes (but is not limited to) radio and television stations.

(k) Stock Redemption Expenses.—

(1) In general.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the redemption of its stock.

(2) Exceptions.—Paragraph (1) shall not apply to—

(A) Certain specific deductions.—Any—

(i) deduction allowable under section 163 (relating to interest), or

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[40] As in original. No subsection (h).

[41] P.L. 101-239, §6202(b)(3)(A); 103 Stat. 2233.

(ii) deduction for dividends paid (within the meaning of section 561).

(B) Stock of certain regulated investment companies.—Any amount paid or incurred in connection with the redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(l) Special Rules for Health Insurance Costs of Self-Employed Individuals.—

(1) In general.—In the case of an individual who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to 25 percent of the amount paid during the taxable year for insurance which constitutes medical care for the taxpayer, his spouse, and dependents.

(2) Limitations.—

(A) Dollar amount.—No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B)[42] Other coverage.—Paragraph (1) shall not apply to any taxpayer who is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer.

(3) Coordination with medical deduction, etc.—

(A) Medical deduction.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(B) Health insurance credit.—The amount otherwise taken into account under paragraph (1) as paid for insurance which constitutes medical care shall be reduced by the amount (if any) of the health insurance credit allowable to the taxpayer for the taxable year under section 32.[43]

(4) Deduction not allowed for self-employment tax purposes.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2.

(5) Treatment of certain S corporation shareholders.—This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.[44]

(6)[45] Termination.—This subsection shall not apply to any taxable year beginning after December 31, 1991[46].

(m) Cross Reference.—

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

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SEC. 164. TAXES.

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(f) Deduction for One-Half of Self-Employment taxes.—

(1) In general.—In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business.—For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attribut-

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[42] P.L. 101-140, §203(a)(4), struck out subparagraph (B) and redesignated subparagraph (C) as subparagraph (B).

[43] P.L. 101-508, §11111(d)(2), amended paragraph (3) in its entirety.

[44] P.L. 101-239, §7107(b), added this paragraph (5).

[45] P.L. 101-239, §7107(b), redesignated the former paragraph (5) as paragraph (6).

[46] P.L. 101-239, §7107(a)(1), struck out "December 31, 1989" and substituted "September 30, 1990".
P.L. 101-508, §11410(a), struck out "September 30, 1990" and substituted "December 31, 1991".

able to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

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SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) Deduction allowed.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) Net Operating Loss Carrybacks and Carryovers.—

(1) Years to which loss may be carried.—

(A) General rule.—Except as otherwise provided in this paragraph, a net operating loss for any taxable year—

(i) shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss, and

(ii) shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss.

(B) Special rules for REIT's.—

(i) In general.—A net operating loss for a REIT year shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss.

(ii) Special rule.—In the case of any net operating loss for a taxable year which is not a REIT year, such loss shall not be carried back to any taxable year which is a REIT year.

(iii) REIT year.—For purposes of this subparagraph, the term "REIT year" means any taxable year for which the provisions of part II of subchapter M (relating to real estate investment trusts) apply to the taxpayer.

(C) Specified liability losses.—In the case of a taxpayer which has a specified liability loss (as defined in subsection (f)) for a taxable year, such specified liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(D) Bad debt losses of commercial banks.—In the case of any bank (as defined in section 585(a)(2)), the portion of the net operating loss for any taxable year beginning after December 31, 1986, and before January 1, 1994, which is attributable to the deduction allowed under section 166(a) shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss and a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

(E) Excess interest loss.—

(i) In general.—If—

(I) there is a corporate equity reduction transaction, and

(II) an applicable corporation has a corporate equity reduction interest loss for any loss limitation year ending after August 2, 1989,

then the corporate equity reduction interest loss shall be a net operating loss carryback and carryover to the taxable years described in subparagraph (A), except that such loss shall not be carried back to a taxable year preceding the taxable year in which the corporate equity reduction transaction occurs.

(ii) Loss limitation year.—For purposes of clause (i) and subsection (m), the term "loss limitation year" means, with respect to any corporate equity reduction transaction, the taxable year in which such transaction occurs and each of the 2 succeeding taxable years.

(iii) Applicable corporation.—For purposes of clause (i), the term "applicable corporation" means—

(I) a C corporation which acquires stock, or the stock of which is acquired in a major stock acquisition,

(II) a C corporation making distributions with respect to, or redeeming its stock in connection with an excess distribution, or

(III) a C corporation which is a successor of a corporation described in subclause (I) or (II).

(iv) Other definitions.—

For definitions of terms used in this subparagraph, see subsection (h).

(2) Amount of carrybacks and carryovers.—The entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by

reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof, and

(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

(3) ELECTION TO WAIVE CARRYBACK.—Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for such taxable year.[47]

(c) NET OPERATING LOSS DEFINED.—For purposes of this section, the term "net operating loss" means the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) MODIFICATIONS.—The modifications referred to in this section are as follows:

(1) NET OPERATING LOSS DEDUCTION.—No net operating loss deduction shall be allowed.

(2) CAPITAL GAINS AND LOSSES OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets.

(3) DEDUCTION FOR PERSONAL EXEMPTIONS.—No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) NONBUSINESS DEDUCTIONS OF TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—

(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business,

shall be treated as attributable to the trade or business;

(B) the modifications specified in paragraphs (1) and (3) shall be taken into account;

(C) any deduction allowable under section 165(c)(3) (relating to casualty losses) shall not be taken into account; and

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED, ETC.—The deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a)(1)(B) of such section.

(6) MODIFICATIONS RELATED TO REAL ESTATE INVESTMENT TRUSTS.—In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

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[47] P.L. 101-508, §11811(a), amended subsection (b) in its entirety.

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b), the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2)).

(e) Law Applicable to Computations.—In determining the amount of any net operating loss carryback or carryover to any taxable year, the necessary computations involving any other taxable year shall be made under the law applicable to such other taxable year.

(f)[48] Rules Relating to Specified Liability Loss.—For purposes of this section—

(1) In general.—The term "specified liability loss" means the sum of the following amounts to the extent taken into account in computing the net operating loss for the taxable year:

(A) Any amount allowable as a deduction under section 162 or 165 which is attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(B) Any amount (not described in subparagraph (A)) allowable as a deduction under this chapter with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer if—

(i) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of the taxable year, or

(ii) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of the taxable year.

A liability shall not be taken into account under subparagraph (B) unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

(2) Limitation.—The amount of the specified liability loss for any taxable year shall not exceed the amount of the net operating loss for such taxable year.

(3) Special rule for nuclear powerplants.—Except as provided in regulations prescribed by the Secretary, that portion of a specified liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(C), be carried back to each of the taxable years during the period—

(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

(B) ending with the taxable year preceding the loss year.

(4) Product liability.—The term "product liability" means—

(A) liability of the taxpayer for damages on account of physical injury or emotional harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(5) Coordination with subsection (b)(2).—For purposes of applying subsection (b)(2), a specified liability loss for any taxable year shall be treated as a separate net operating loss for such taxable year to be taken into account after the remaining portion of the net operating loss for such taxable year.

(6) Election.—Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(C) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(C). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(g)[49] Rules Relating to Bad Debt Losses of Commercial Banks.—For purposes of this section—

(1) Portion attributable to deduction for bad debts.—The portion of the net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be the excess of—

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[48] P.L. 101-508, §11811(b)(1), redesignated subsection (j) as subsection (f).
P.L. 101-508, §11811(b)(2)(A), amended subsection (f), as redesignated, in its entirety.

[49] P.L. 101-508, §11811(b)(1), redesignated subsection (l) as subsection (g).

(i) the net operating loss for such taxable year, over

(ii) the net operating loss for such taxable year determined without regard to the amount allowed as a deduction under section 166(a) for such taxable year.

(2) Coordination with subsection (b)(2).—For purposes of subsection (b)(2), the portion of a net operating loss for any taxable year which is attributable to the deduction allowed under section 166(a) shall be treated in a manner similar to the manner in which a specified liability loss is treated.[50]

(h)[51] Corporate Equity Reduction Interest Losses.—For purposes of this section—

(1) In general.—The term "corporate equity reduction interest loss" means, with respect to any loss limitation year, the excess (if any) of—

(A) the net operating loss for such taxable year, over

(B) the net operating loss for such taxable year determined without regard to any allocable interest deductions otherwise taken into account in computing such loss.

(2) Allocable interest deductions.—

(A) In general.—The term "allocable interest deductions" means deductions allowed under this chapter for interest on the portion of any indebtedness allocable to a corporate equity reduction transaction.

(B) Method of allocation.—Except as provided in regulations and subparagraph (E), indebtedness shall be allocated to a corporate equity reduction transaction in the manner prescribed under clause (ii) of section 263A(f)(2)(A) (without regard to clause (i) thereof).

(C) Allocable deductions not to exceed interest increases.—Allocable interest deductions for any loss limitation year shall not exceed the excess (if any) of—

(i) the amount allowable as a deduction for interest paid or accrued by the taxpayer during the loss limitation year, over

(ii) the average of such amounts for the 3 taxable years preceding the taxable year in which the corporate equity reduction transaction occurred.

(D) De minimis rule.—A taxpayer shall be treated as having no allocable interest deductions for any taxable year if the amount of such deductions (without regard to this subparagraph) is less than $1,000,000.

(E) Special rule for certain unforeseeable events.—If an unforeseeable extraordinary adverse event occurs during a loss limitation year but after the corporate equity reduction transaction—

(i) indebtedness shall be allocated in the manner described in subparagraph (B) to unreimbursed costs paid or incurred in connection with such event before being allocated to the corporate equity reduction transaction, and

(ii) the amount determined under subparagraph (C)(i) shall be reduced by the amount of interest on indebtedness described in clause (i).

(F) Transition rule.—If any of the 3 taxable years described in subparagraph (C)(ii) end on or before August 2, 1989, the taxpayer may substitute for the amount determined under such subparagraph an amount equal to the interest paid or accrued (determined on an annualized basis) during the taxpayer's taxable year which includes August 3, 1989, on indebtedness of the taxpayer outstanding on August 2, 1989.

(3) Corporate equity reduction transaction.—

(A) In general.—The term "corporate equity reduction transaction" means—

(i) a major stock acquisition, or

(ii) an excess distribution.

(B) Major stock acquisition.—

(i) In general.—The term "major stock acquisition" means the acquisition by a corporation pursuant to a plan of such corporation (or any group of persons acting in concert with such corporation) of stock in another corporation representing 50 percent or more (by vote or value) of the stock in such other corporation,

(ii) Exception.—The term "major stock acquisition" does not include a qualified stock purchase (within the meaning of section 338) to which an election under section 338 applies.[52]

(C) Excess distribution.—The term "excess distribution" means the excess (if any) of—

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[50] P.L. 101-508, §11811(b)(3), amended paragraph (2) in its entirety.

[51] P.L. 101-239, §7211(b), added subsection (m).
P.L. 101-508, §11811(b)(1), redesignated subsection (m) as subsection (h).

[52] P.L. 101-508, §11324(a), amended clause (ii) in its entirety.

(i) the aggregate distributions (including redemptions) made during a taxable year by a corporation with respect to its stock, over

(ii) the greater of—

(I) 150 percent of the average of such distributions during the 3 taxable years immediately preceding such taxable year, or

(II) 10 percent of the fair market value of the stock of such corporation as of the beginning of such taxable year.

(D) Rules for applying subparagraph (B).—For purposes of subparagraph (B)—

(i) Plans to acquire stock.—All plans referred to in subparagraph (B) by any corporation (or group of persons acting in concert with such corporation) with respect to another corporation shall be treated as 1 plan.

(ii) Acquisitions during 24-month period.—All acquisitions during any 24-month period shall be treated as pursuant to 1 plan.

(E) Rules for applying subparagraph (C).—For purposes of subparagraph (C)—

(i) Certain preferred stock disregarded.—Stock described in section 1504(a)(4), and distributions (including redemptions) with respect to such stock, shall be disregarded.

(ii) Issuance of stock.—The amounts determined under clauses (i) and (ii)(I) of subparagraph (C) shall be reduced by the aggregate amount of stock issued by the corporation during the applicable period in exchange for money or property other than stock in the corporation.

(4) Other rules.—

(A) Ordering rule.—For purposes of paragraph (1), in determining the allocable interest deductions taken into account in computing the net operating loss for any taxable year, taxable income for such taxable year shall be treated as having been computed by taking allocable interest deductions into account after all other deductions.

(B) Coordination with subsection (b)(2).—For purposes of subsection (b)(2)[53]

(i) a corporate equity reduction interest loss shall be treated in a manner similar to the manner in which a specified liability loss is treated, and

(ii) in determining the net operating loss deduction for any prior taxable year referred to in the 3rd sentence of subsection (b)(2), the portion of any net operating loss which may not be carried to such taxable year under subsection (b)(1)(E) shall not be taken into account.[54]

(C) Members of affiliated groups.—Except as provided by regulations, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer for purposes of this subsection and subsection (b)(1)(M).

(5) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations—

(A) for applying this subsection to successor corporations and in cases where a taxpayer becomes, or ceases to be, a member of an affiliated group filing a consolidated return under section 1501,

(B) to prevent the avoidance of this subsection through related parties, pass-through entities, and intermediaries, and

(C) for applying this subsection where more than 1 corporation is involved in a corporate equity reduction transaction.

(i)[55] Cross References.—

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

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SEC. 217. MOVING EXPENSES.

(a) Deduction Allowed.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work.

(b) Definition of Moving Expenses.—

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[53] As in original; no punctuation.

[54] P.L. 101-508, §11811(b)(4), amended subparagraph (B) in its entirety.

[55] P.L. 101-239, §7211(b), redesignated subsection (m) as subsection (n).
P.L. 101-508, §11811(b)(1), redesignated subsection (n) as subsection (i).

(1) In general.—For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from the former residence to the new residence,

(B) of traveling (including meals and lodging) from the former residence to the new place of residence,

(C) of traveling (including meals and lodging), after obtaining employment, from the former residence to the general location of the new principal place of work and return, for the principal purpose of searching for a new residence,

(D) of meals and lodging while occupying temporary quarters in the general location of the new principal place of work during any period of 30 consecutive days after obtaining employment, or

(E) constituting qualified residence sale, purchase, or lease expenses.

(2) Qualified residence sale, etc., expenses.—For purposes of paragraph (1)(E), the term "qualified residence sale, purchase, or lease expenses" means only reasonable expenses incident to—

(A) the sale or exchange by the taxpayer or his spouse of the taxpayer's former residence (not including expenses for work performed on such residence in order to assist in its sale) which (but for this subsection and subsection (e)) would be taken into account in determining the amount realized on the sale or exchange,

(B) the purchase by the taxpayer or his spouse of a new residence in the general location of the new principal place of work which (but for this subsection and subsection (e)) would be taken into account in determining—

(i) the adjusted basis of the new residence, or

(ii) the cost of a loan (but not including any amounts which represent payments or prepayments of interest),

(C) the settlement of an unexpired lease held by the taxpayer or his spouse on property used by the taxpayer as his former residence, or

(D) the acquisition of a lease by the taxpayer or his spouse on property used by the taxpayer as his new residence in the general location of the new principal place of work (not including amounts which are payments or prepayments of rent).

(3) Limitations.—

(A) Dollar limits.—The aggregate amount allowable as a deduction under subsection (a) in connection with a commencement of work which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1) shall not exceed $1,500. The aggregate amount allowable as a deduction under subsection (a) which is attributable to qualified residence sale, purchase, or lease expenses shall not exceed $3,000, reduced by the aggregate amount so allowable which is attributable to expenses described in subparagraph (C) or (D) of paragraph (1).

(B) Husband and wife.—If a husband and wife both commence work at a new principal place of work within the same general location, subparagraph (A) shall be applied as if there was only one commencement of work. In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting "$750" for "$1,500", and by substituting "$1,500" for "$3,000".

(C) Individuals other than taxpayer.—In the case of any individual other than the taxpayer, expenses referred to in subparagraphs (A) through (D) of paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for Allowance.—No deduction shall be allowed under this section unless—

(1) the taxpayer's new principal place of work—

(A) is at least 35 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least 35 miles from his former residence, and

(2) either—

(A) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks, or

(B) during the 24-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee or performs services as a self-employed individual on a full-time basis, in such general location, during at least 78 weeks, of which not less than 39 weeks are during the 12-month period referred to in subparagraph (A).

For purposes of paragraph (1), the distance between two points shall be the shortest of the more commonly traveled routes between such two points.

(d) RULES FOR APPLICATION OF SUBSECTION (c)(2).—

(1) The condition of subsection (c)(2) shall not apply if the taxpayer is unable to satisfy such condition by reason of—

(A) death or disability, or

(B) involuntary separation (other than for willful misconduct) from the service of, or transfer for the benefit of, an employer after obtaining full-time employment in which the taxpayer could reasonably have been expected to satisfy such condition.

(2) If a taxpayer has not satisfied the condition of subsection (c)(2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c)(2).

(3) If—

(A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c)(2) cannot be satisfied at the close of a subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for the first such subsequent taxable year.

(e) DENIAL OF DOUBLE BENEFIT.—The amount realized on the sale of the residence described in subparagraph (A) of subsection (b)(2) shall not be decreased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a), and the basis of a residence described in subparagraph (B) of subsection (b)(2) shall not be increased by the amount of any expenses described in such subparagraph which are allowed as a deduction under subsection (a). This subsection shall not apply to any expenses with respect to which an amount is included in gross income under subsection (d)(3).

(f) RULES FOR SELF-EMPLOYED INDIVIDUALS.—

(1) DEFINITION.—For purposes of this section, the term "self-employed individual" means an individual who performs personal services—

(A) as the owner of the entire interest in an unincorporated trade or business, or

(B) as a partner in a partnership carrying on a trade or business.

(2) RULE FOR APPLICATION OF SUBSECTIONS (b)(1)(C) AND (D).—For purposes of subparagraphs (C) and (D) of subsection (b)(1), an individual who commences work at a new principal place of work as a self-employed individual shall be treated as having obtained employment when he has made substantial arrangements to commence such work.

(g) RULES FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES.—In the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station—

(1) the limitations under subsection (c) shall not apply;

(2) any moving and storage expenses which are furnished in kind (or for which reimbursement or an allowance is provided, but only to the extent of the expenses paid or incurred) to such member, his spouse, or his dependents, shall not be includible in gross income, and no reporting with respect to such expenses shall be required by the Secretary of Defense or the Secretary of Transportation, as the case may be; and

(3) if moving and storage expenses are furnished in kind (or if reimbursement or an allowance for such expenses is provided) to such member's spouse and his dependents with regard to moving to a location other than the one to which such member moves (or from a location other than the one from which such member moves), this section shall apply with respect to the moving expenses of his spouse and dependents—

(A) as if his spouse commenced work as an employee at a new principal place of work at such location;

(B) for purposes of subsection (b)(3), as if such place of work was within the same general location as the member's new principal place of work, and

(C) without regard to the limitations under subsection (c).

(h) SPECIAL RULES FOR FOREIGN MOVES.—

(1) INCREASE IN LIMITATIONS.—In the case of a foreign move—

(A) subsection (b)(1)(D) shall be applied by substituting "90 consecutive days" for "30 consecutive days",

(B) subsection (b)(3)(A) shall be applied by substituting "$4,500" for "$1,500" and by substituting "$6,000" for "$3,000", and

(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: "In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$2,250' for '$4,500', and by substituting '$3,000' for '$6,000'."

(2) Allowance of certain storage fees.—In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(3) Foreign move.—For purposes of this subsection, the term "foreign move" means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(4) United states defined.—For purposes of this subsection and subsection (i), the term "United States" includes the possessions of the United States.

(i) Allowance of Deductions in Case of Retirees or Decedents Who Were Working Abroad.—

(1) In general.—In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new principal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses.—For purposes of paragraph (1), the term "qualified retiree moving expenses" means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses.—For purposes of paragraph (1), the term "qualified survivor moving expenses" means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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SEC. 274. DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC., EXPENSES.

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(n) Only 80 Percent of Meal and Entertainment Expenses Allowed as Deduction.—

(1) In general.—The amount allowable as a deduction under this chapter for—

(A) any expense for food or beverages, and

(B) any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such activity,

shall not exceed 80 percent of the amount of such expense or item which would (but for this paragraph) be allowable as a deduction under this chapter.

(2) Exceptions.—Paragraph (1) shall not apply to any expense if—

(A) such expense is described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e),

(B) in the case of an expense for food or beverages, such expense is excludable from the gross income of the recipient under section 132 by reason of subsection (e) thereof (relating to de minimis fringes),

(C) such expense is covered by a package involving a ticket described in subsection (l)(1)(B), (D)[56] in the case of an employer who pays or reimburses moving expenses of an employee, such expenses are includible in the income of the employee under section 82, or

(E)[57] such expense is for food or beverages—

(i) required by any[58] Federal law to be provided to crew members of a commercial vessel,

(ii) provided to crew members of a commercial vessel—

(I) which is operating on the Great Lakes, the Saint Lawrence Seaway, or any inland waterway of the United States, and

(II) which is of a kind which would be required by Federal law to provide food and beverages to crew members if it were operated at sea,

(iii) provided on an oil or gas platform or drilling rig if the platform or rig is located offshore, or

(iv) provided on an oil or gas platform or drilling rig, or at a support camp which is in proximity and integral to such platform or rig, if the platform or rig is located in the United States north of 54 degrees north latitude.

In the case of the employee, the exception of subparagraph (A) shall not apply to expenses described in subparagraph (D)[59]. [60] Clauses (i) and (ii) of subparagraph (E)[61] shall not apply to vessels primarily engaged in providing luxury water transportation (determined under the principles of subsection (m)).

[(3) Stricken.[62]]

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SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) Requirements for Qualification.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).[63];

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) Special rules relating to nondiscrimination requirements.—

(A) Salaried or clerical employees.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

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[56] P.L. 101-239, §7816(a)(1), amended subparagraph (E) in its entirety.

P.L. 101-508, §11802(b)(2)(A)(i), struck out subparagraph (D) and redesignated subparagraph (E) as subparagraph (D).

[57] P.L. 101-508, §11802(b)(2)(A)(i), redesignated subparagraph (F) as subparagraph (E).

[58] P.L. 101-239, §7841(d)(18), inserted "any".

[59] P.L. 101-508, §11802(b)(2)(A)(ii), struck out "described in subparagraph (E)" and substituted "described in subparagraph (D)".

[60] P.L. 101-239, §7816(a)(2), added this sentence.

[61] P.L. 101-508, §11802(b)(2)(A)(iii), struck out "of subparagraph (F)" and substituted "of subparagraph (E)".

[62] P.L. 101-508, §11802(b)(2)(B), struck out paragraph (3).

[63] As in original. Period should be stricken.

(B) CONTRIBUTIONS AND BENEFITS MAY BEAR UNIFORM RELATIONSHIP TO COMPENSATION.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) CERTAIN DISPARITY PERMITTED.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l).

(D) INTEGRATED DEFINED BENEFIT PLAN.—

(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant's final pay is the compensation (as defined in section 414(q)(7)) paid to the participant by the employer for any year—

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—

(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

(i) Where distributions have begun under subparagraph (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-year rule for other cases.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.—If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special rule for surviving spouse of employee.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained age 70 1/2, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required beginning date.—For purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2. In the case of a governmental plan or church plan[64], the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires. For purposes of this subparagraph, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).[65]

(D) Life expectancy.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) Designated beneficiary.—For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) Treatment of payments to children.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) Treatment of incidental death benefit distributions.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(10) Other requirements.—

(A) Plans benefiting owner-employees.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

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[64] P.L. 101-140, §203(a)(5)(A), struck out "(as defined in section 89(i)(4))".

[65] P.L. 101-140, §203(a)(5)(B), added this sentence.

(B) TOP-HEAVY PLANS.—

(i) IN GENERAL.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) PLANS WHICH MAY BECOME TOP-HEAVY.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) EXEMPTION FOR GOVERNMENTAL PLANS.—This subparagraph shall not apply to any governmental plan.

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

Clause (iii)(III) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) Cross reference.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) Assignment and alienation.—

(A) In general.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) Special rules for domestic relations orders.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a[66] trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

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[66] As in original. Probably should be "A".

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d). In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.

[(18) Repealed.[67]]

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes a qualified total distribution described in section 402(a)(5)(E)(i)(I). This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution.

[(21) Repealed.[68]]

(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

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[67] P.L. 97-248, §237(b); 96 Stat. 511.

[68] P.L. 99-514, §1171(b)(5); 100 Stat. 2513.

(A) In general.—A trust shall not constitute a qualified trust under this subsection unless such trust is part of a plan which on each day of the plan year benefits the lesser of—

(i) 50 employees of the employer, or

(ii) 40 percent or more of all employees of the employer.

(B) Treatment of excludable employees.—

(i) In general.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b).

(ii) Separate application for certain excludable employees.—If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if—

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) Eligibility to participate.—In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.

(D) Special rule for collective bargaining units.—Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(E) Paragraph not to apply to multiemployer plans.—Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(F) Special rule for certain dispositions or acquisitions.—Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph.

(G) Separate lines of business.—At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph, the term "separate line of business" has the meaning given such term by section 414(r) (without regard to paragraph (7) thereof).

(H) Special rule for certain police or firefighters.—

(i) In general.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

(ii) Qualified public safety employee.—For purposes of this subparagraph, the term "qualified public safety employee" means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

(I) Regulations.—The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph.

(27) Determinations as to profit-sharing plans.—

(A) Contributions need not be based on profits.— The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) Plan must designate type.—In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) Additional requirements relating to employee stock ownership plans.—

(A) In general.—In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a), such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C).

(B) Diversification of investments.—

(i) In general.—A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) Method of meeting requirements.—A plan shall be treated as meeting the requirements of clause (i) if—

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election[69].

(iii) Qualified participant.—For purposes of this subparagraph, the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) Qualified election period.—For purposes of this subparagraph, the term "qualified election period" means the 6-plan-year period beginning with the later of—

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) Coordination with distribution rules.—Any distribution required by this subparagraph shall not be taken into account in determining whether—

(I) a subsequent distribution is a lump-sum distribution under section 402(e)(4)(A), or

(II) section 402(a)(5)(D)(iii) applies to a subsequent distribution.

(C) Use of independent appraiser.—A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1).

(29) Security required upon adoption of plan amendment resulting in significant underfunding.—

(A) In general.—If—

(i) a defined benefit plan (other than a multiemployer plan) to which the requirements of section 412 apply[70] adopts an amendment an effect of which is to increase current liability under the plan for a plan year, and

(ii) the funded current liability percentage of the plan for the plan year in which the amendment takes effect is less than 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment,

the trust of which such plan is a part shall not constitute a qualified trust under this subsection unless such amendment does not take effect until the contributing sponsor (or any member of the controlled group of the contributing sponsor) provides security to the plan.

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[69] P.L. 100-647, §1011B(j)(1) [as amended by P.L. 101-239, §7811(h)(3)], inserted "and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election".

[70] P.L. 101-239, §7881(i)(4)(A), inserted "to which the requirements of section 412 apply".

(B) FORM OF SECURITY.—The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) AMOUNT OF SECURITY.—The security shall be in an amount equal to the excess of—

(i) the lesser of—

(I) the amount of additional plan assets which would be necessary to increase the funded current liability percentage under the plan to 60 percent, including the amount of the unfunded current liability under the plan attributable to the plan amendment, or

(II) the amount of the increase in current liability under the plan attributable to the plan amendment and any other plan amendments adopted after December 22, 1987, and before such plan amendment[71], over

(ii) $10,000,000.

(D) RELEASE OF SECURITY.—The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at the end of the first plan year which ends after the provision of the security and for which the funded current liability percentage under the plan is not less than 60 percent. The Secretary may prescribe regulations for partial releases of the security by reason of increases in the funded current liability percentage.

(E) DEFINITIONS.—For purposes of this paragraph, the terms "current liability", "funded current liability percentage", and "unfunded current liability" shall have the meanings given such terms by section 412(l), except that in computing unfunded current liability there shall not be taken into account any unamortized portion of the unfunded old liability amount as of the close of the plan year.

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.[72]

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

(1) SELF-EMPLOYED INDIVIDUAL TREATED AS EMPLOYEE.—

(A) IN GENERAL.—The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) SELF-EMPLOYED INDIVIDUAL.—The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

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[71] P.L. 101-239, §7881(i)(1)(A), inserted "and any other plan amendments adopted after December 22, 1987, and before such plan amendment".

[72] P.L. 101-239, §7811(g)(1), moved paragraph (30) from the end and inserted in after paragraph (29).

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income.—

(A) In general.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

[(B) Repealed.[73]]

(C) Income From Disposition of Certain Property.—For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee.—The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen.—For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Additional Requirements for Qualification of Trusts and Plans Benefiting Owner-Employees.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

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[73] P.L. 89-908, §204(c); 80 Stat. 1577.

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(2) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (1)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(3) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed.[74]]

(f) CERTAIN CUSTODIAL ACCOUNTS AND CONTRACTS.—For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) ANNUITY DEFINED.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) MEDICAL, ETC., BENEFITS FOR RETIRED EMPLOYEES AND THEIR SPOUSES AND DEPENDENTS.—Under regulations prescribed by the Secretary, and subject to the provisions of section 420[75], a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

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[74] P.L. 98-369, §713(d)(3); 98 Stat. 958.

[75] P.L. 101-508, §12011(b), inserted ", and subject to the provisions of section 420".

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(i). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established.[76]

(i) CERTAIN UNION-NEGOTIATED PENSION PLANS.—In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

⟦(j) Repealed.[77]⟧

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) GENERAL RULE.—A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) separation from service, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59 1/2, or

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(a)(8) applies, upon hardship of the employee, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

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[76] P.L. 101-239, §7311(a), added this sentence.
[77] P.L. 97-248; §238(b); 96 Stat. 512.

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for such year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee's election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in[78] 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(4) OTHER REQUIREMENTS.—

(A) BENEFITS (OTHER THAN MATCHING CONTRIBUTIONS) MUST NOT BE CONTINGENT ON ELECTION TO DEFER.—A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS NOT ELIGIBLE.—A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) any organization exempt from tax under this subtitle.

This subparagraph shall not apply to a rural cooperative plan[79].

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[78] As in original.

[79] P.L. 100-647, §6071(b)(2) [as amended by P.L. 101-239, §7816(l)], struck out "rural electric cooperative plan" and substituted "rural cooperative plan".

(C) Coordination with other plans.—Except as provided in section 401(m), any employer contribution made pursuant to an employee's election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(ii).

(5) Highly compensated employee.—For purposes of this subsection, the term "highly compensated employee" has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan.—For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan.—For purposes of this subsection—

(A) In general.—The term "rural cooperative plan" means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.

(B) Rural cooperative defined.—For purposes of subparagraph (A), the term "rural cooperative" means—

(i) any organization which—

(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

(II) is engaged primarily in providing electric service on a mutual or cooperative basis,

(ii) any organization described in paragraph (4) or (6) of section 501(c) and at least 80 percent of the members of which are organizations described in clause (i),

(iii) a cooperative telephone company described in section 501(c)(12), and

(iv) an organization which is a national association of organizations described in clause (i), (ii), or (iii).

(8) Arrangement not disqualified if excess contributions distributed.—

(A) In general.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions.—For purposes of subparagraph (A), the term "excess contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions.—Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of the excess contributions attributable to each of such employees.

(D) Additional tax under section 72(t) not to apply.—No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution.—For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), or an excess aggregate contribution under section 401(m)(6)(B).

(F) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.

(9) COMPENSATION.—For purposes of this subsection, the term "compensation" has the meaning given such term by section 414(s).

(10) DISTRIBUTIONS UPON TERMINATION OF PLAN OR DISPOSITION OF ASSETS OR SUBSIDIARY—

(A) IN GENERAL.—The following events are described in this paragraph:

(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.

(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

(i) IN GENERAL.—An event shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the event.

(ii) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term "lump sum distribution" has the meaning given such term by section 402(e)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (H) thereof.

(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.

(l) PERMITTED DISPARITY IN PLAN CONTRIBUTIONS OR BENEFITS.—

(1) IN GENERAL.—The requirements of this subsection are met with respect to a plan if—

(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and

(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) DEFINED CONTRIBUTION PLAN.—

(A) IN GENERAL.—A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) CONTRIBUTION PERCENTAGES.—For purposes of this paragraph—

(i) EXCESS CONTRIBUTION PERCENTAGE.—The term "excess contribution percentage" means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant's compensation in excess of the integration level.

(ii) BASE CONTRIBUTION PERCENTAGE.—The term "base contribution percentage" means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant's compensation not in excess of the integration level.

(3) DEFINED BENEFIT PLAN.—A defined benefit plan meets the requirements of this paragraph if—

(A) EXCESS PLANS.—

(i) IN GENERAL.—In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, preretirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) BENEFIT PERCENTAGES.—For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) OFFSET PLANS.—In the case of an offset plan, the plan provides that—

(i) a participant's accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) DEFINITIONS RELATING TO PARAGRAPH (3).—For purposes of paragraph (3)—

(A) MAXIMUM EXCESS ALLOWANCE.—The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 of a percentage point, and

(ii) in the case of total benefits, 3/4 of a percentage point, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed the base benefit percentage.

(B) MAXIMUM OFFSET ALLOWANCE.—The maximum offset allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, 3/4 percent of the participant's final average compensation, and

(ii) in the case of total benefits, 3/4 percent of the participant's final average compensation, multiplied by the participant's years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum offset allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) REDUCTIONS.—

(i) IN GENERAL.—The Secretary shall prescribe regulations requiring the reduction of the 3/4 percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) BASIS OF REDUCTIONS.—Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) OFFSET PLAN.—The term "offset plan" means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

(A) INTEGRATION LEVEL.—

(i) IN GENERAL.—The term "integration level" means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) LIMITATION.—The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) LEVEL TO APPLY TO ALL PARTICIPANTS.—A plan's integration level shall apply with respect to all participants in the plan.

(iv) MULTIPLE INTEGRATION LEVELS.—Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.

(B) COMPENSATION.—The term "compensation" has the meaning given such term by section 414(s).

(C) AVERAGE ANNUAL COMPENSATION.—The term "average annual compensation" means the participant's highest average annual compensation for—

(i) any period of at least 3 consecutive years, or

(ii) if shorter, the participant's full period of service.

(D) Final average compensation.—

(i) In general.—The term "final average compensation" means the participant's average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or

(II) if shorter, the participant's full period of service.

(ii) Limitation.—A participant's final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation.—

(i) In general.—The term "covered compensation" means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year.—For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age.—For purposes of this subparagraph, the term "social security retirement age" has the meaning given such term by section 415(b)(8).

(F) Regulations.—The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and

(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads.—In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees' tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination Test for Matching Contributions and Employee Contributions.—

(1) In general.—A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements.—

(A) Contribution percentage requirement.—A plan meets the contribution percentage requirement of this paragraph for any plan year only if the contribution percentage for eligible highly compensated employees does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees, or

(ii) the lesser of 200 percent of such percentage for all other eligible employees, or such percentage for all other eligible employees plus 2 percentage points.

(B) Multiple plans treated as a single plan.—If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.

(3) CONTRIBUTION PERCENTAGE.—For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee's compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year.

(4) DEFINITIONS.—For purposes of this subsection—

(A) MATCHING CONTRIBUTION.—The term "matching contribution" means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee's elective deferral.

(B) ELECTIVE DEFERRAL.—The term "elective deferral" means any employer contribution described in section 402(g)(3).

(C) QUALIFIED NONELECTIVE CONTRIBUTIONS.—The term "qualified nonelective contribution" means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) EMPLOYEES TAKEN INTO CONSIDERATION.—

(A) IN GENERAL.—Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) CERTAIN NONPARTICIPANTS.—If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(6) PLAN NOT DISQUALIFIED IF EXCESS AGGREGATE CONTRIBUTIONS DISTRIBUTED BEFORE END OF FOLLOWING PLAN YEAR.—

(A) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) EXCESS AGGREGATE CONTRIBUTIONS.—For purposes of subparagraph (A), the term "excess aggregate contributions" means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) METHOD OF DISTRIBUTING EXCESS AGGREGATE CONTRIBUTIONS.—Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the respective portions of such amounts attributable to each of such employees. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) COORDINATION WITH SUBSECTION (k) AND 402(g).—The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—

(i) first determining the excess deferrals (within the meaning of section 402(g)), and

(ii) then determining the excess contributions under subsection (k).

(7) TREATMENT OF DISTRIBUTIONS.—

(A) ADDITIONAL TAX OF SECTION 72(t) NOT APPLICABLE.—No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) EXCLUSION OF EMPLOYEE CONTRIBUTIONS.—Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term "highly compensated employee" has the meaning given to such term by section 414(q).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term "alternative limitation" means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.

(10) CROSS REFERENCE.—

For excise tax on certain excess contributions, see section 4979.

(n) COORDINATION WITH QUALIFIED DOMESTIC RELATIONS ORDERS.—The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) CROSS REFERENCE.—For exemption from tax of a trust qualified under this section, see section 501(a).

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

* * * * * * *

(8) CASH OR DEFERRED ARRANGEMENTS.—For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

* * * * * * *

(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—For purposes of this chapter—

(1) IN GENERAL.—Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

* * * * * * *

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

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SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) TAXABILITY OF BENEFICIARY UNDER A QUALIFIED ANNUITY PLAN.—

(1) DISTRIBUTEE TAXABLE UNDER SECTION 72.—If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of

section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

[(2) Repealed.[80]]

(3) SELF-EMPLOYED INDIVIDUALS.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(b) Taxability of Beneficiary Under Annuity Purchased by Section 501(c)(3) Organization or Public School.—

(1) General Rule.—If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii) shall not be considered contributed by such employer.

(2) Exclusion allowance.—

(A) In general.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

(B) Election to have allowance determined under section 415 rules.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

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[80] P.L. 99-514, §1122(b)(1)(B); 100 Stat. 2466.

(C) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees.—For purposes of this subsection and section 415(c)(4)(A)—

(i) all years of service by—

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

(D) Alternative exclusion allowance.—

(i) In general.—In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of—

(I) $3,000, or

(II) the includible compensation of such individual.

(ii) Subparagraph not to apply to individuals with adjusted gross income over $17,000.—This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds $17,000.

(iii) Special rule for foreign missionaries.—In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.

(3) Includible compensation.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) Years of service.—In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract.—If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable.—For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(7) Custodial accounts for regulated investment company stock.—

(A) Amounts paid treated as contributions.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

(B) Account treated as plan.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company.—For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts.—

(A) General rule.—If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Special rules for partial distributions.—

(i) In general.—In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

(ii) Total distribution.—For purposes of subparagraph (A), the term "total distribution" means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(C) Certain rules made applicable.—Rules similar to the rules of subparagraphs (B), (C), and (F)(i) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(D) Required distributions not eligible for rollover treatment.—Subparagraph (A) shall not apply to any distribution to the extent such distribution is required under paragraph (10).

(9) Retirement income accounts provided by churches, etc.—

(A) Amounts paid treated as contributions.—For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account.—For purposes of this paragraph, the term "retirement income account" means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements.—Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of section 401(a)(9) are met (and requirements similar to the incidental death benefit requirements of

section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account).

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59 1/2, SEPARATION FROM SERVICE, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59 1/2, separates from service, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

(B) in the case of hardship.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) NONDISCRIMINATION REQUIREMENTS.—

(A) IN GENERAL.—For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election[81] specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) CHURCH.—For purposes of paragraph (1)(D), the term "church" has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

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SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

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(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

(1) IN GENERAL.—For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

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(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

(A) ARRANGEMENTS WHICH QUALIFY.—

(i) IN GENERAL.—A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

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[81] P.L. 101-508, §11701(k), inserted "involving a one-time irrevocable election".

(ii) 50 PERCENT OF ELIGIBLE EMPLOYEES MUST ELECT.—Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) REQUIREMENTS RELATING TO DEFERRAL PERCENTAGE.—Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) LIMITATIONS ON ELECTIVE DEFERRALS.—Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) EXCEPTION WHERE MORE THAN 25 EMPLOYEES.—This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) DISTRIBUTIONS OF EXCESS CONTRIBUTIONS.—

(i) IN GENERAL.—Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) EXCESS CONTRIBUTION.—For purposes of clause (i), the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) EXCEPTION FOR STATE AND LOCAL AND TAX-EXEMPT PENSIONS.—This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) EXCEPTION WHERE PENSION DOES NOT MEET REQUIREMENTS NECESSARY TO INSURE DISTRIBUTION OF EXCESS CONTRIBUTIONS.—This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

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(h) * * *

(2) DESIGNATION BY UNITS OF GOVERNMENT.—For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

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SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) Year of Inclusion in Gross Income.—In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.

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SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) Exemption from Taxation.—An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503.

(b) Tax on Unrelated Business Income and Certain other Activities.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in parts II, III, and VI of this subchapter, but (notwithstanding parts II, III, and VI of this subchapter) shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of Exempt Organizations.—The following organizations are referred to in subsection (a):

(1) Any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before July 18, 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (l).

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—

(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system—

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

(11) Teachers' retirement fund associations of a purely local character, if—

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12)(A) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(B) In the case of a mutual or cooperative telephone company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from a nonmember telephone company for the performance of communication services which involve members of the mutual or cooperative telephone company,

(ii) from qualified pole rentals,

(iii) from the sale of display listings in a directory furnished to the members of the mutual or cooperative telephone company, or

(iv) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(C) In the case of a mutual or cooperative electric company, subparagraph (A) shall be applied without taking into account any income received or accrued—

(i) from qualified pole rentals, or

(ii) from the prepayment of a loan under section 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987).

(D) For purposes of this paragraph, the term "qualified pole rental" means any rental of a pole (or other structure used to support wires) if such pole (or other structure)—

(i) is used by the telephone or electric company to support one or more wires which are used by such company in providing telephone or electric services to its members, and

(ii) is used pursuant to the rental to support one or more wires (in addition to the wires described in clause (i)) for use in connection with the transmission by wire of electricity or of telephone or other communications.

For purposes of the preceding sentence, the term "rental" includes any sale of the right to use the pole (or other structure).

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for the purpose of the disposal of bodies by burial or cremation which is not permitted by its charter to engage in any business not necessarily incident to that purpose and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14)(A) Credit unions without capital stock organized and operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit,

(iii) mutual savings banks not having capital stock represented by shares, or

(iv) mutual savings banks described in section 591(b)[63]

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).

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[63] As in original. No punctuation.

(15)(A) Insurance companies or associations other than life (including interinsurers and reciprocal underwriters) if the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed $350,000.

(B) For purposes of subparagraph (A), in determining whether any company or association is described in subparagraph (A), such company or association shall be treated as receiving during the taxable year amounts described in subparagraph (A) which are received during such year by all other companies or associations which are members of the same controlled group as the insurance company or association for which the determination is being made.

(C) For purposes of subparagraph (B), the term "controlled group" has the meaning given such term by section 831(b)(2)(B)(ii).

(16) Corporations organized by an association subject to part IV of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17)(A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities, with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)), and

(iii) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the benefits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association described in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of benefits under the plan,

(B) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of section 414(q)),

(C) such benefits do not discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q)). A plan shall not be considered discriminatory within the meaning of this subparagraph merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan, and

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) such contributions do not exceed the amount with respect to which a deduction is allowable under section 219(b)(3),

(ii) requirements similar to the requirements of section 401(k)(3)(A)(ii) are met with respect to such elective contributions,

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) (other than paragraph (4) thereof), and

(iv) the requirements of section 401(a)(30) are met.

For purposes of subparagraph (D)(ii), rules similar to the rules of section 401(k)(8) shall apply. For purposes of section 4979, any excess contribution under clause (ii) shall be treated as an excess contribution under a cash or deferred arrangement.

(19) A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—

(A) organized in the United States or any of its possessions,

(B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, or widowers of past or present members of the Armed Forces of the United States or of cadets, and

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(20) an[83] organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

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[83] As in original. Should be "An".

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 9501, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Mine Safety and Health Act of 1977, and any State law providing compensation for disability or death due to pneumoconiosis.

(22) A trust created or organized in the United States and established in writing by the plan sponsors of multiemployer plans if—

(A) the purpose of such trust is exclusively—

(i) to pay any amount described in section 4223(c) or (h) of the Employee Retirement Income Security Act of 1974, and

(ii) to pay reasonable and necessary administrative expenses in connection with the establishment and operation of the trust and the processing of claims against the trust,

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) the investment in securities, obligations, or time or demand deposits described in clause (ii) of paragraph (21)(B),

(C) such trust meets the requirements of paragraphs (2), (3), and (4) of section 4223(b), 4223(h), or, if applicable, section 4223(c) of the Employee Retirement Income Security Act of 1974, and

(D) the trust instrument provides that, on dissolution of the trust, assets of the trust may not be paid other than to plans which have participated in the plan or, in the case of a trust established under section 4223(h) of such Act, to plans with respect to which employers have participated in the fund.

(23) Any association organized before 1880 more than 75 percent of the members of which are present or past members of the Armed Forces and a principal purpose of which is to provide insurance and other benefits to veterans or their dependents.

(24) A trust described in section 4049 of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of the Single-Employer Pension Plan Amendments Act of 1986).

(25)(A) Any corporation or trust which—

(i) has no more than 35 shareholders or beneficiaries,

(ii) has only 1 class of stock or beneficial interest, and

(iii) is organized for the exclusive purposes of—

(I) acquiring real property and holding title to, and collecting income from, such property, and

(II) remitting the entire amount of income from such property (less expenses) to 1 or more organizations described in subparagraph (C) which are shareholders of such corporation or beneficiaries of such trust.

For purposes of clause (iii), the term "real property" shall not include any interest as a tenant in common (or similar interest) and shall not include any indirect interest.

(B) A corporation or trust shall be described in subparagraph (A) without regard to whether the corporation or trust is organized by 1 or more organizations described in subparagraph (C).

(C) An organization is described in this subparagraph if such organization is—

(i) a qualified pension, profit sharing, or stock bonus plan that meets the requirements of section 401(a),

(ii) a governmental plan (within the meaning of section 414(d));

(iii) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, or

(iv) any organization described in paragraph (3).

(D) A corporation or trust shall in no event be treated as described in subparagraph (A) unless such corporation or trust permits its shareholders or beneficiaries—

(i) to dismiss the corporation's or trust's investment adviser, following reasonable notice, upon a vote of the shareholders or beneficiaries holding a majority of interest in the corporation or trust, and

(ii) to terminate their interest in the corporation or trust by either, or both, of the following alternatives, as determined by the corporation or trust:

(I) by selling or exchanging their stock in the corporation or interest in the trust (subject to any Federal or State securities law) to any organization described in subparagraph (C) so long as the sale or exchange does not increase the number of shareholders or beneficiaries in such corporation or trust above 35, or

(II) by having their stock or interest redeemed by the corporation or trust after the shareholder or beneficiary has provided 90 days notice to such corporation or trust.

(E)(i) For purposes of this title—

(I) a corporation which is a qualified subsidiary shall not be treated as a separate corporation, and

(II) all assets, liabilities, and items of income, deduction, and credit of a qualified subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the corporation or trust described in subparagraph (A).

(ii) For purposes of this subparagraph, the term "qualified subsidiary" means any corporation if, at all times during the period such corporation was in existence, 100 percent of the stock of such corporation is held by the corporation or trust described in subparagraph (A).

(iii) For purposes of this subtitle, if any corporation which was a qualified subsidiary ceases to meet the requirements of clause (ii), such corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before such cessation from the corporation or trust described in subparagraph (A) in exchange for its stock.

(F) For purposes of subparagraph (A), the term "real property" includes any personal property which is leased under, or in connection with, a lease of real property, but only if the rent attributable to such personal property (determined under the rules of section 856(d)(1)) for the taxable year does not exceed 15 percent of the total rent for the taxable year attributable to both the real and personal property leased under, or in connection with, such lease.

(d) Religious and Apostolic Organizations.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cooperative Hospital Service Organizations.—For purposes of this title, an organization shall be treated as an organization organized and operated exclusively for charitable purposes, if—

(1) such organization is organized and operated solely—

(A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a hospital which is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and

(B) to perform such services solely for two or more hospitals each of which is—

(i) an organization described in subsection (c)(3) which is exempt from taxation under subsection (a),

(ii) a constituent part of an organization described in subsection (c)(3) which is exempt from taxation under subsection (a) and which, if organized and operated as a separate entity, would constitute an organization described in subsection (c)(3), or

(iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;

(2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8 1/2 months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and

(3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

For purposes of this title, any organization which, by reason of the preceding sentence, is an organization described in subsection (c)(3) and exempt from taxation under subsection (a), shall be treated as a hospital and as an organization referred to in section 170(b)(1)(A)(iii).

(f) Cooperative Service Organizations of Operating Educational Organizations.—For purposes of this title, if an organization is—

(1) organized and operated solely to hold, commingle, and collectively invest and reinvest (including arranging for and supervising the performance by independent contractors of investment services related thereto) in stocks and securities, the moneys contributed thereto by each of the members of such organization, and to collect income therefrom and turn over the entire amount thereof, less expenses, to such members,

(2) organized and controlled by one or more such members, and

(3) comprised solely of members that are organizations described in clause (ii) or (iv) of section 170(b)(1)(A)—

(A) which are exempt from taxation under subsection (a), or

(B) the income of which is excluded from taxation under section 115(a),

then such organization shall be treated as an organization organized and operated exclusively for charitable purposes.

(g) Definition of Agricultural.—For purposes of subsection (c)(5), the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

(h) Expenditures by Public Charities to Influence Legislation.—

(1) General rule.—In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial part of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally—

(A) makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or

(B) makes grass roots expenditures in excess of the grass roots ceiling amount for such organization for each taxable year.

(2) Definitions.—For purposes of this subsection—

(A) Lobbying expenditures.—The term "lobbying expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d)).

(B) Lobbying ceiling amount.—The lobbying ceiling amount for any organization for any taxable year is 150 percent of the lobbying nontaxable amount for such organization for such taxable year, determined under section 4911.

(C) Grass roots expenditures.—The term "grass roots expenditures" means expenditures for the purpose of influencing legislation (as defined in section 4911(d) without regard to paragraph (1)(B) thereof).

(D) Grass roots ceiling amount.—The grass roots ceiling amount for any organization for any taxable year is 150 percent of the grass roots nontaxable amount for such organization for such taxable year, determined under section 4911.

(3) Organizations to which this subsection applies.—This subsection shall apply to any organization which has elected (in such manner and at such time as the Secretary may prescribe) to have the provisions of this subsection apply to such organization and which, for the taxable year which includes the date the election is made, is described in subsection (c)(3) and—

(A) is described in paragraph (4), and

(B) is not a disqualified organization under paragraph (5).

(4) Organizations permitted to elect to have this subsection apply.—An organization is described in this paragraph if it is described in—

(A) section 170(b)(1)(A)(ii) (relating to educational institutions),

(B) section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),

(C) section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),

(D) section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),

(E) section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or

(F) section 509(a)(3) (relating to organizations supporting certain types of public charities) except that for purposes of this subparagraph, section 509(a)(3) shall be applied without regard to the last sentence of section 509(a).

(5) DISQUALIFIED ORGANIZATIONS.—For purposes of paragraph (3) an organization is a disqualified organization if it is—

(A) described in section 170(b)(1)(A)(i) (relating to churches),

(B) an integrated auxiliary of a church or of a convention or association of churches, or

(C) a member of an affiliated group of organizations (within the meaning of section 4911(f)(2)) if one or more members of such group is described in subparagraph (A) or (B).

(6) YEARS FOR WHICH ELECTION IS EFFECTIVE.—An election by an organization under this subsection shall be effective for all taxable years of such organization which—

(A) end after the date the election is made, and

(B) begin before the date the election is revoked by such organization (under regulations prescribed by the Secretary).

(7) NO EFFECT ON CERTAIN ORGANIZATIONS.—With respect to any organization for a taxable year for which—

(A) such organization is a disqualified organization (within the meaning of paragraph (5)), or

(B) an election under this subsection is not in effect for such organization,

nothing in this subsection or in section 4911 shall be construed to affect the interpretation of the phrase, "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation," under subsection (c)(3).

(8) AFFILIATED ORGANIZATIONS.—For rules regarding affiliated organizations, see section 4911(f).

(i) PROHIBITION OF DISCRIMINATION BY CERTAIN SOCIAL CLUBS.—Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion. The preceding sentence to the extent it relates to discrimination on the basis of religion shall not apply to—

(1) an auxiliary of a fraternal beneficiary society if such society—

(A) is described in subsection (c)(8) and exempt from tax under subsection (a), and

(B) limits its membership to the members of a particular religion, or

(2) a club which in good faith limits its membership to the members of a particular religion in order to further the teachings or principles of that religion, and not to exclude individuals of a particular race or color.

(j) SPECIAL RULES FOR CERTAIN AMATEUR SPORTS ORGANIZATIONS.—

(1) IN GENERAL.—In the case of a qualified amateur sports organization—

(A) the requirement of subsection (c)(3) that no part of its activities involve the provision of athletic facilities or equipment shall not apply, and

(B) such organization shall not fail to meet the requirements of subsection (c)(3) merely because its membership is local or regional in nature.

(2) QUALIFIED AMATEUR SPORTS ORGANIZATION DEFINED.—For purposes of this subsection, the term "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if such organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

(k) TREATMENT OF CERTAIN ORGANIZATIONS PROVIDING CHILD CARE.—For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.[84]

(l) Government Corporations Exempt Under Subsection (c)(1).—For purposes of subsection (c)(1), the following organizations are described in this subsection:

(1) The Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(2) The Resolution Trust Corporation established under section 21A of the Federal Home Loan Bank Act.

(3) The Resolution Funding Corporation established under section 21B of the Federal Home Loan Bank Act.[85]

(m) Certain Organizations Providing Commercial-Type Insurance Not Exempt From Tax.—

(1) Denial of tax exemption where providing commercial-type insurance is substantial part of activities.—An organization described in paragraph (3) or (4) of subsection (c) shall be exempt from tax under subsection (a) only if no substantial part of its activities consists of providing commercial-type insurance.

(2) Other organizations taxed as insurance companies on insurance business.—In the case of an organization described in paragraph (3) or (4) of subsection (c) which is exempt from tax under subsection (a) after the application of paragraph (1) of this subsection—

(A) the activity of providing commercial-type insurance shall be treated as an unrelated trade or business (as defined in section 513), and

(B) in lieu of the tax imposed by section 511 with respect to such activity, such organization shall be treated as an insurance company for purposes of applying subchapter L with respect to such activity.

(3) Commercial-type insurance.—For purposes of this subsection, the term "commercial-type insurance" shall not include—

(A) insurance provided at substantially below cost to a class of charitable recipients,

(B) incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations,

(C) property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii)) by a church or convention or association of churches for such church or convention or association of churches,

(D) providing retirement or welfare benefits (or both) by a church or a convention or association of churches (directly or through an organization described in section 414(e)(3)(A) or 414(e)(3)(B)(ii)) for the employees (including employees described in section 414(e)(3)(B)) of such church or convention or association of churches or the beneficiaries of such employees, and

(E) charitable gift annuities.

(4) Insurance includes annuities.—For purposes of this subsection, the issuance of annuity contracts shall be treated as providing insurance.

(5) Charitable gift annuity.—For purposes of paragraph (3)(E), the term "charitable gift annuity" means an annuity if—

(A) a portion of the amount paid in connection with the issuance of the annuity is allowable as a deduction under section 170 or 2055, and

(B) the annuity is described in section 514(c)(5) (determined as if any amount paid in cash in connection with such issuance were property).

(n) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

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SEC. 509. PRIVATE FOUNDATION DEFINED.

(a) General Rule.—For purposes of this title, the term "private foundation" means a domestic or foreign organization described in section 501(c)(3) other than—

* * * * * * *

(3) an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is operated, supervised, or controlled by or in connection with one or more organizations described in paragraph (1) or (2), and

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[84] Alignment as in original.

[85] P.L. 101-73, §1402(a), amended subsection (l) in its entirety.

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2); and

* * * * * * *

SEC. 513. UNRELATED TRADE OR BUSINESS.

(a) General Rule.—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501 (or, in the case of an organization described in section 511(a)(2)(B), to the exercise or performance of any purpose or function described in section 501(c)(3)), except that such term does not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 501(c)(3) or in the case of a college or university described in section 511(a)(2)(B), by the organization primarily for the convenience of its members, students, patients, officers, or employees, or, in the case of a local association of employees described in section 501(c)(4) organized before May 27, 1969, which is the selling by the organization of items of work-related clothes and equipment and items normally sold through vending machines, through food dispensing facilities, or by snack bars, for the convenience of its members at their usual places of employment; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

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SEC. 631. GAIN OR LOSS IN THE CASE OF TIMBER, COAL, OR DOMESTIC IRON ORE.

(a) Election to Consider Cutting as Sale or Exchange.—If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right on the first day of such year and for a period of more than 6 months before such cutting) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of Timber with a Retained Economic Interest.—In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of Coal or Domestic Iron Ore with a Retained Economic Interest.—In the case of the disposal of coal (including lignite), or iron ore mined in the United

States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

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SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) General Rule.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

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(8) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

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SEC. 707. TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP.

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(c) Guaranteed Payments.—To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and, subject to section 263, for purposes of section 162(a) (relating to trade or business expenses).

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SEC. 861. INCOME FROM SOURCES WITHIN THE UNITED STATES.

(a) Gross Income From Sources Within United States.—The following items of gross income shall be treated as income from sources within the United States:

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(8) Social security benefits.—Any social security benefit (as defined in section 86(d)).

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SEC. 871. TAX ON NONRESIDENT ALIEN INDIVIDUALS.

(a) Income Not Connected With United States Business—30 Percent Tax.

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(3) Taxation of social security benefits.—For purposes of this section and section 1441—

(A) one-half of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).

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SEC. 911. CITIZENS OR RESIDENTS OF THE UNITED STATES LIVING ABROAD.

(a) Exclusion From Gross Income.—At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign Earned Income.—

(1) Definition.—For purposes of this section—

(A) In general.—The term "foreign earned income" with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income.—The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income.—

(A) In general.—The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate of $70,000.

(B) Attribution to year in which services are performed.—For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income.—In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(c) Housing Cost Amount.—For purposes of this section—

(1) In general.—The term "housing cost amount" means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year, over

(B) an amount equal to the product of—

(i) 16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS-14, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Housing expenses.—

(A) In general.—The term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household.—

(i) In general.—Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) SEPARATE HOUSEHOLD FOR SPOUSE AND DEPENDENTS.—If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words "if they reside with him" in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(3) SPECIAL RULES WHERE HOUSING EXPENSES NOT PROVIDED BY EMPLOYER.—

(A) IN GENERAL.—To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) LIMITATION.—For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-YEAR CARRYOVER OF HOUSING AMOUNTS NOT ALLOWED BY REASON OF SUBPARAGRAPH (B).—

(i) IN GENERAL.—The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) LIMITATION.—For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) EMPLOYER PROVIDED AMOUNTS.—For purposes of this paragraph, the term "employer provided amounts" means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) FOREIGN EARNED INCOME.—For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFIED INDIVIDUAL.—The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) TAXPAYER ENGAGED IN TRADE OR BUSINESS.—In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) TAX HOME.—The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) WAIVER OF PERIOD OF STAY IN FOREIGN COUNTRY.—Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A) and (c)(1)(B)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) TEST OF BONA FIDE RESIDENCE.—If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) DENIAL OF DOUBLE BENEFITS.—No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) AGGREGATE BENEFIT CANNOT EXCEED FOREIGN EARNED INCOME.—The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(3)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) LIMITATION ON INCOME EARNED IN RESTRICTED COUNTRY.—

(A) IN GENERAL.—If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term "foreign earned income" shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term "housing expenses" shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) REGULATIONS.—For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) EXCEPTION.—Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) ELECTION.—

(1) IN GENERAL.—An election under subsection (a) shall apply to the taxable year for which made and to all subsequent taxable years unless revoked under paragraph (2).

(2) REVOCATION.—A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) CROSS REFERENCES.—

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

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SEC. 931. INCOME FROM SOURCES WITHIN GUAM, AMERICAN SAMOA, OR THE NORTHERN MARIANA ISLANDS.

(a) GENERAL RULE.—In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) DEDUCTIONS, ETC. ALLOCABLE TO EXCLUDED AMOUNTS NOT ALLOWABLE.—An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) SPECIFIED POSSESSION.—For purposes of this section, the term "specified possession" means Guam, American Samoa, and the Northern Mariana Islands.

(d) SPECIAL RULES.—For purposes of this section—

(1) EMPLOYEES OF THE UNITED STATES.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(2) DETERMINATION OF SOURCE, ETC.—The determination as to whether income is described in paragraph (1) or (2) of subsection (a) shall be made under regulations prescribed by the Secretary.

(3) DETERMINATION OF RESIDENCY.—For purposes of this section and section 876, the determination of whether an individual is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands shall be made under regulations prescribed by the Secretary.

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SEC. 933. INCOME FROM SOURCES WITHIN PUERTO RICO.

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year. In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico. In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

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SEC. 1256. SECTION 1256 CONTRACTS MARKED TO MARKET.

(a) GENERAL RULE.—For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) SECTION 1256 CONTRACT DEFINED.—For purposes of this section, the term "section 1256 contract" means—

(1) any regulated futures contract,

(2) any foreign currency contract,

(3) any nonequity option, and

(4) any dealer equity option.

(c) TERMINATIONS, ETC.—

(1) IN GENERAL.—The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) SPECIAL RULE WHERE TAXPAYER TAKES DELIVERY ON OR EXERCISES PART OF STRADDLE.—If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) FAIR MARKET VALUE TAKEN INTO ACCOUNT.—For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) ELECTIONS WITH RESPECT TO MIXED STRADDLES.—

(1) ELECTION.—The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) TIME AND MANNER.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) ELECTION REVOCABLE ONLY WITH CONSENT.—An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) MIXED STRADDLE.—For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) MARK TO MARKET NOT TO APPLY TO HEDGING TRANSACTIONS.—

(1) SECTION NOT TO APPLY.—Subsection (a) shall not apply in the case of a hedging transaction.

(2) DEFINITION OF HEDGING TRANSACTION.—For purposes of this subsection, the term "hedging transaction" means any transaction if—

(A) such transaction is entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily—

(i) to reduce risk of price change or currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer,

(B) the gain or loss on such transactions is treated as ordinary income or loss, and

(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) SPECIAL RULE FOR SYNDICATES.—

(A) IN GENERAL.—Notwithstanding paragraph (2), the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.

(B) SYNDICATE DEFINED.—For purposes of subparagraph (A), the term "syndicate" means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 464(e)(2)).

(C) HOLDINGS ATTRIBUTABLE TO ACTIVE MANAGEMENT.—For purposes of subparagraph (B), an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 464(e)(2))—

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii), or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax-avoidance purposes.

For purposes of this subparagraph, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) LIMITATION ON LOSSES FROM HEDGING TRANSACTIONS.—

(A) IN GENERAL.—

(i) LIMITATION.—Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) CARRYOVER OF DISALLOWED LOSS.—Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) EXCEPTION WHERE ECONOMIC LOSS.—Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) HEDGING LOSS.—The term "hedging loss" means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) UNRECOGNIZED GAIN.—The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).

(f) SPECIAL RULES.—

(1) DENIAL OF CAPITAL GAINS TREATMENT FOR PROPERTY IDENTIFIED AS PART OF A HEDGING TRANSACTION.—For purposes of this title, gain from any property shall in no event be considered as gain from the sale or exchange of a capital asset if such

property was at any time personal property (as defined in section 1092(d)(1)) identified under subsection (e)(2)(C) by the taxpayer as being part of a hedging transaction.

(2) SUBSECTION (a)(3) NOT TO APPLY TO ORDINARY INCOME PROPERTY.—Paragraph (3) of subsection (a) shall not apply to any gain or loss which, but for such paragraph, would be ordinary income or loss.

(3) CAPITAL GAIN TREATMENT FOR TRADERS IN SECTION 1256 CONTRACTS.—

(A) IN GENERAL.—For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) EXCEPTION FOR CERTAIN HEDGING TRANSACTIONS.—Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) TREATMENT OF UNDERLYING PROPERTY.—For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

(4) SPECIAL RULE FOR DEALER EQUITY OPTIONS OF LIMITED PARTNERS OR LIMITED ENTREPRENEURS.—In the case of any gain or loss with respect to dealer equity options which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.

(g) DEFINITIONS.—For purposes of this section—

(1) REGULATED FUTURES CONTRACTS DEFINED.—The term "regulated futures contract" means a contract—

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) FOREIGN CURRENCY CONTRACT DEFINED.—

(A) FOREIGN CURRENCY CONTRACT.—The term "foreign currency contract" means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) NONEQUITY OPTION.—The term "nonequity option" means any listed option which is not an equity option.

(4) DEALER EQUITY OPTION.—The term "dealer equity option" means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) LISTED OPTION.—The term "listed option" means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) EQUITY OPTION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "equity option" means any option—

(i) to buy or sell stock, or

(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

(B) EXCEPTION FOR CERTAIN OPTIONS REGULATED BY COMMODITIES FUTURES TRADING COMMISSION.—The term "equity option" does not include any option with respect to any group of stocks or stock index if—

(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

(ii) the Secretary determines that such option meets the requirements of law for such a designation.

(7) QUALIFIED BOARD OR EXCHANGE.—The term "qualified board or exchange" means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) OPTIONS DEALER.—

(A) IN GENERAL.—The term "options dealer" means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) PERSONS TRADING IN OTHER MARKETS.—In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term "options dealer" also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

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SEC. 5000. CERTAIN[86] GROUP HEALTH PLANS.

(a) IMPOSITION OF TAX.—There is hereby imposed on any employer or employee organization that contributes to a nonconforming[87] group health plan a tax equal to 25 percent of the employer's or employee organization's expenses incurred during the calendar year for each[88] group health plan to which the employer or employee organization contributes.

(b) GROUP HEALTH PLAN AND LARGE GROUP HEALTH PLAN.—For purposes of this section—

(1) GROUP HEALTH PLAN.—The term "group health plan" means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

(2) LARGE GROUP HEALTH PLAN.—The term "large group health plan" means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year.[89]

(c) NONCONFORMING GROUP HEALTH PLAN.—For purposes of this section, the term "nonconforming group health plan" means a group health plan or large group health plan that at any time during a calendar year does not comply with the requirements of subpargraphs (A) and (C) or subparagraph (B), respectively, of section 1862(b)(1) of the Social Security Act.[90]

(d) GOVERNMENT ENTITIES.—For purposes of this section, the term "employer" does not include a Federal or other governmental entity.

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SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) GENERAL RULE.—When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) IDENTIFICATION OF TAXPAYER.—The Secretary is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or helpful in securing proper identification of such persons.

(c) RETURNS, ETC., OF DISCS AND FORMER DISCS AND FSC'S AND FORMER FSC'S.—

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[86] P.L. 101-239, §6202(b)(2)(A), struck out "LARGE".

[87] P.L. 101-239, §6202(b)(2)(B), struck out "large".

[88] P.L. 101-239, §6202(b)(2)(B), struck out "large".

[89] P.L. 101-239, §6202(b)(2)(C), amended subsection (b) in its entirety.

[90] P.L. 101-239, §6202(b)(2)(C), amended subsection (c) in its entirety.

(1) Records and information.—A DISC or former DISC or a FSC or former FSC shall for the taxable year—

(A) furnish such information to persons who were shareholders at any time during such taxable year, and to the Secretary, and

(B) keep such records, as may be required by regulations prescribed by the Secretary.

(2) Returns.—A DISC shall file for the taxable year such returns as may be prescribed by the Secretary by forms or regulations.

(d) Authority To Require Information Concerning Section 912 Allowances.—The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Regulations Requiring Returns on Magnetic Media, Etc.—

(1) In general.—The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary.

(2) Requirements of regulations.— In prescribing regulations under paragraph (1), the Secretary—

(A) shall not require any person to file returns on magnetic media unless such person is required to file at least 250 returns during the calendar year, and

(B) shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with the requirements of such regulations.[91]

(f) Income, Estate, And Gift Taxes.—For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see subparts B and C.

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SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) Requirement.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) the total amount of wages as defined in section 3401(a),

(4) the total amount deducted and withheld as tax under section 3402,

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101,

(7) the total amount paid to the employee under section 3507 (relating to advance payment of earned income credit),

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457, and

(9) the total amount incurred for dependent care assistance with respect to such employee under a dependent care assistance program described in section 129(d).

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements furnished to the employer pursuant to section 6053(a). The amounts required to be shown by paragraph (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111.

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[91] P.L. 101-239, §7713(a), amended subsection (e) in its entirety.

(b) SPECIAL RULE AS TO COMPENSATION OF MEMBERS OF ARMED FORCES.—In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) ADDITIONAL REQUIREMENTS.—The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under section 3101 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security Act.

(d) STATEMENTS TO CONSTITUTE INFORMATION RETURNS.—A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary shall, when required by such regulations, be filed with the Secretary.

(e) RAILROAD EMPLOYEES.—

(1) ADDITIONAL REQUIREMENT.—Every person required to deduct and withhold tax under section 3201 from an employee shall include on or with the statement required to be furnished such employee under subsection (a) a notice concerning the provisions of this title with respect to the allowance of a credit or refund of the tax on wages imposed by section 3101(b) and the tax on compensation imposed by section 3201 or 3211 which is treated as a tax on wages imposed by section 3101(b).

(2) INFORMATION TO BE SUPPLIED TO EMPLOYEES.—Each person required to deduct and withhold tax under section 3201 during any year from an employee who has also received wages during such year subject to the tax imposed by section 3101(b) shall, upon request of such employee, furnish to him a written statement showing—

(A) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted,

(B) the total amount deducted as tax under section 3201, and

(C) the portion of the total amount deducted as tax under section 3201 which is for financing the cost of hospital insurance under part A of title XVIII of the Social Security Act.

(f) STATEMENTS REQUIRED IN CASE OF SICK PAY PAID BY THIRD PARTIES.—

(1) STATEMENTS REQUIRED FROM PAYOR.—

(A) IN GENERAL.—If, during any calendar year, any person makes a payment of third-party sick pay to an employee, such person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom such payment was made showing—

(i) the name and, if there is withholding under section 3402(o), the social security number of such employee,

(ii) the total amount of the third-party sick pay paid to such employee during the calendar year, and

(iii) the total amount (if any) deducted and withheld from such sick pay under section 3402.

For purposes of the preceding sentence, the term "third-party sick pay" means any sick pay (as defined in section 3402(o)(2)(C)) which does not constitute wages for purposes of chapter 24 (determined without regard to section 3402(o)(1)).

(B) SPECIAL RULES.—

(i) STATEMENTS ARE IN LIEU OF OTHER REPORTING REQUIREMENTS.—The reporting requirements of subparagraph (A) with respect to any payments shall, with respect to such payments, be in lieu of the requirements of subsection (a) and of section 6041.

(ii) PENALTIES MADE APPLICABLE.—For purposes of sections 6674 and 7204, the statements required to be furnished by subparagraph (A) shall be treated as statements required under this section to be furnished to employees.

(2) INFORMATION REQUIRED TO BE FURNISHED BY EMPLOYER.—Every employer who receives a statement under paragraph (1)(A) with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to such employee showing—

(A) the information shown on the statement furnished under paragraph (1)(A), and

(B) if any portion of the sick pay is excludable from gross income under section 104(a)(3), the portion which is not so excludable and the portion which is so excludable.

To the extent practicable, the information required under the preceding sentence shall be furnished on or with the statement (if any) required under subsection (a).

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SEC. 6053. REPORTING OF TIPS.

(a) REPORTS BY EMPLOYEES.—Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary.

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SEC. 6057. ANNUAL REGISTRATION, ETC.

(a) ANNUAL REGISTRATION.—

(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary.

(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

(A) the name of the plan,

(B) the name and address of the plan administrator,

(C) the name and taxpayer identifying number of each participant in the plan—

(i) who, during such plan year, separated from the service covered by the plan,

(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

(E) such other information as the Secretary may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

(b) NOTIFICATION OF CHANGE IN STATUS.—Any plan administrator required to register under subsection (a) shall also notify the Secretary, at such time as may be prescribed by regulations, of—

(1) any change in the name of the plan,

(2) any change in the name or address of the plan administrator,

(3) the termination of the plan, or

(4) the merger or consolidation of the plan with any other plan or its division into two or more plans.

(c) VOLUNTARY REPORTS.—To the extent provided in regulations prescribed by the Secretary, the Secretary may receive from—

(1) any plan to which subsection (a) applies, and

(2) any other plan (including any governmental plan or church plan (within the meaning of section 414)),

such information (including information relating to plan years beginning before January 1, 1974) as the plan administrator may wish to file with respect to the deferred vested benefit rights of any participant separated from the service covered by the plan during any plan year.

(d) Transmission Of Information To Secretary Of Health, Education, And Welfare[92].—The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health and Human Services.

(e) Individual Statement To Participant.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(f) Regulations.—

(1) In general.—The Secretary, after consultation with the Secretary of Health and Human Services, may prescribe such regulations as may be necessary to carry out the provisions of this section.

(2) Plans to which more than one employer contributes.—This section shall apply to any plan to which more than one employer is required to contribute only to the extent provided in regulations prescribed under this subsection.

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SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) General Rule.—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section, and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), (l)(12),[93] paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

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(l) Disclosure Of Returns And Return Information For Purposes Other Than Tax Administration.

(1) Disclosure of certain returns and return information to social security administration and railroad retirement board.—The Secretary may, upon written request, disclose returns and return information with respect to—

(A) taxes imposed by chapters 2, 21, and 24, to the Social Security Administration for purposes of its administration of the Social Security Act;

(B) a plan to which part I of subchapter D of chapter 1 applies, to the Social Security Administration for purposes of carrying out its responsibility under section 1131 of the Social Security Act, limited, however to return information described in section 6057(d); and

(C) taxes imposed by chapter 22, to the Railroad Retirement Board for purposes of its administration of the Railroad Retirement Act.

(2) Disclosure of returns and return information to the department of labor and pension benefit guaranty corporation.—The Secretary may, upon written request, furnish returns and return information to the proper officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of titles I and IV of the Employee Retirement Income Security Act of 1974.

(3) Disclosure that applicant for federal loan has tax delinquent account.—

(A) In general.—Upon written request, the Secretary may disclose to the head of the Federal agency administering any included Federal loan program whether or not an applicant for a loan under such program has a tax delinquent account.

(B) Restriction on disclosure.—Any disclosure under subparagraph (A) shall be made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question.

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[92] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

[93] P.L. 101-239, §6202(a)(1)(B), inserted "(l)(12),".

(C) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—For purposes of this paragraph, the term "included Federal loan program" means any program—

(i) under which the United States or a Federal agency makes, guarantees, or insures loans, and

(ii) with respect to which there is in effect a determination by the Director of the Office of Management and Budget (which has been published in the Federal Register) that the application of this paragraph to such program will substantially prevent or reduce future delinquencies under such program.

(4) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN PERSONNEL OR CLAIMANT REPRESENTATIVE MATTERS.—The Secretary may disclose returns and return information—

(A) upon written request—

(i) to an employee or former employee of the Department of the Treasury, or to the duly authorized legal representative of such employee or former employee, who is or may be a party to any administrative action or proceeding affecting the personnel rights of such employee or former employee; or

(ii) to any person, or to the duly authorized legal representative of such person, whose rights are or may be affected by an administrative action or proceeding under section 330 of title 31, United States Code,

solely for use in the action or proceeding, or in preparation for the action or proceeding, but only to the extent that the Secretary determines that such returns or return information is or may be relevant and material to the action or proceeding; or

(B) to officers and employees of the Department of the Treasury for use in any action or proceeding described in subparagraph (A), or in preparation for such action or proceeding, to the extent necessary to advance or protect the interests of the United States.

(5) DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE.—Upon written request by the Secretary of Health and Human Services, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

(6) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL CHILD SUPPORT ENFORCEMENT AGENCIES.—

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

(ii) available return information reflected on any return filed by, or with respect to, any individual described in clause (i) relating to the amount of such individual's gross income (as defined in section 61) or consisting of the names and addresses of payors of such income and the names of any dependents reported on such return, but only if such return information is not reasonably available from any other source.

(B) RESTRICTION ON DISCLOSURE.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations.

(7) DISCLOSURE OF RETURN INFORMATION TO FEDERAL, STATE, AND LOCAL AGENCIES ADMINISTERING CERTAIN PROGRAMS UNDER THE SOCIAL SECURITY ACT OR THE FOOD STAMP ACT OF 1977.—

(A) RETURN INFORMATION FROM SOCIAL SECURITY ADMINISTRATION.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from internal revenue service.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies.—The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food Stamp Act of 1977;[94]

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66); and[95]

(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

(III) health-care services furnished under section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B) of such title; and

(IV) compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule.[96]

Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in clause (viii)(IV). Clause (viii) shall not apply after September 30, 1992.[97]

(8) Disclosure of certain return information by social security administration to state and local child support enforcement agencies.—

(A) In general.—Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

(B) Restriction on disclosure.—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating, individuals owing such obligations. For purposes of the preceding sentence, the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under part D of title IV of such Act.

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[94] P.L. 101-508, §8051(a)(1)(A), struck out "and".

[95] P.L. 101-508, §8051(a)(1)(B), struck out the period and substituted "; and".

[96] P.L. 101-508, §8051(a)(1)(C), added clause (viii).

[97] P.L. 101-508, §8051(a)(1)(C), added this sentence.

(C) **State or local child support enforcement agency.**—For purposes of this paragraph, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in subparagraph (B).

(9) **Disclosure of alcohol fuel producers to administrators of state alcohol laws.**—Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

(10) **Disclosure of certain information to agencies requesting a reduction under section 6402(c) or 6402(d).**—

(A) **Return information from internal revenue service.**—The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection (c) or (d) of section 6402—

(i) taxpayer identity information with respect to the taxpayer against whom such a reduction was made or not made and with respect to any other person filing a joint return with such taxpayer,

(ii) the fact that a reduction has been made or has not been made under such subsection with respect to such taxpayer,

(iii) the amount of such reduction,

(iv) whether such taxpayer filed a joint return, and

(v) the fact that a payment was made (and the amount of the payment) to the spouse of the taxpayer on the basis of a joint return.

(B) **Restriction on use of disclosed information.**—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection (c) or (d) of section 6402 is sought for purposes of collecting the debt with respect to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection (c) or (d) of section 6402.

(11) **Disclosure of return information to carry out federal employees' retirement system.**—

(A) **In general.**—The Commissioner of Social Security shall, on written request, disclose to the Office of Personnel Management return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5).

(B) **Restriction on disclosure.**—The Commissioner of Social Security shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, the administration of chapters 83 and 84 of title 5, United States Code.

(12) **Disclosure of certain taxpayer identity information for vertification of employment status of medicare beneficiary and spouse of medicare beneficiary.**—

(A) **Return information from internal revenue service.**—The Secretary shall, upon written request from the Commissioner of Social Security, disclose to the Commissioner available filing status and taxpayer identity information from the individual master files of the Internal Revenue Service relating to whether any medicare beneficiary identified by the Commissioner was a married individual (as defined in section 7703) for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's TIN.

(B) **Return information from social security administration.**—The Commissioner of Social Security shall, upon written request from the Administrator of the Health Care Financing Administration, disclose to the Administrator the following information:

(i) The name and TIN of each medicare beneficiary who is identified as having received wages (as defined in section 3401(a)) from a qualified employer in a previous year.

(ii) For each medicare beneficiary who was identified as married under subparagraph (A) and whose spouse is identified as having received wages from a qualified employer in a previous year—

(I) the name and TIN of the medicare beneficiary, and

(II) the name and TIN of the spouse.

(iii) With respect to each such qualified employer, the name, address, and TIN of the employer and the number of individuals with respect to whom written statements were furnished under section 6051 by the employer with respect to such previous year.

(C) Disclosure by health care financing administration.—With respect to the information disclosed under subparagraph (B), the Administrator of the Health Care Financing Administration may disclose—

(i) to the qualified employer referred to in such subparagraph the name and TIN of each individual identified under such subparagraph as having received wages from the employer (hereinafter in this subparagraph referred to as the "employee") for purposes of determining during what period such employee or the employee's spouse may be (or have been) covered under a group health plan of the employer and what benefits are or were covered under the plan (including the name, address, and identifying number of the plan),

(ii) to any group health plan which provides or provided coverage to such an employee or spouse, the name of such employee and the employee's spouse (if the spouse is a medicare beneficiary) and the name and address of the employer, and, for the purpose of presenting a claim to the plan—

(I) the TIN of such employee if benefits were paid under title XVIII of the Social Security Act with respect to the employee during a period in which the plan was a primary plan (as defined in section 1862(b)(2)(A) of the Social Security Act), and

(II) the TIN of such spouse if benefits were paid under such title with respect to the spouse during such period, and

(iii) to any agent of such Administrator the information referred to in subparagraph (B) for purposes of carrying out clauses (i) and (ii) on behalf of such Administrator.

(D) Special rules.—

(i) Restrictions on disclosure.—Information may be disclosed under this paragraph only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan.

(ii) Timely response to requests.—Any request made under subparagraph (A) or (B) shall be complied with as soon as possible but in no event later than 120 days after the date the request was made.

(E) Definitions.—For purposes of this paragraph—

(i) Medicare beneficiary.—The term "medicare beneficiary" means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII of the Social Security Act, but does not include such an individual enrolled in part A under section 1818.

(ii) Group health plan.—The term "group health plan" means—

(I) any group health plan (as defined in section 5000(b)(1)), and

(II) any large group health plan (as defined in section 5000(b)(2)).

(iii) Qualified employer.—The term "qualified employer" means, for a calendar year, an employer which has furnished written statements under section 6051 with respect to at least 20 individuals for wages paid in the year.

(F) Termination.—Subparagraphs (A) and (B) shall not apply to—

(i) any request made after September 30, 1995[98], and

(ii) any request made before such date for information relating to—

(I) 1994[99] or thereafter in the case of subparagraph (A), or

(II) 1995[100] or thereafter in the case of subparagraph (B).[101]

(m) Disclosure of Taxpayer Identity Information.—

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(6) Blood donor locator service.—

(A) In general.—Upon written request pursuant to section 1141 of the Social Security Act, the Secretary shall disclose the mailing address of taxpayers to officers and employees of the Blood Donor Locator Service in the Department of Health and Human Services.

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[98] P.L. 101-508, §4203(a)(2)(A), struck out "September 30, 1991" and substituted "September 30, 1995".

[99] P.L. 101-508, §4203(a)(2)(B), struck out "1990" and substituted "1994".

[100] P.L. 101-508, §4203(a)(2)(C), struck out "1991" and substituted "1995".

[101] P.L. 101-239, §6202(a)(1)(A), added paragraph (12).

(B) Restriction on disclosure.—The Secretary shall disclose return information under subparagraph (A) only for purposes of, and to the extent necessary in, assisting under the Blood Donor Locator Service authorized persons (as defined in section 1141(h)(1) of the Social Security Act) in locating blood donors who, as indicated by donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, have or may have the virus for acquired immune deficiency syndrome, in order to inform such donors of the possible need for medical care and treatment.

(C) Safeguards.—The Secretary shall destroy all related blood donor records (as defined in section 1141(h)(2) of the Social Security Act) in the possession of the Department of the Treasury upon completion of their use in making the disclosure required under subparagraph (A), so as to make such records undisclosable.

(7) Social security account statement furnished by social security administration.—Upon written request by the Commissioner of Social Security, the Secretary may disclose the mailing address of any taxpayer who is entitled to receive a social security account statement pursuant to section 1143(c) of the Social Security Act, for use only by officers, employees or agents of the Social Security Administration for purposes of mailing such statement to such taxpayer.[102]

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SEC. 6109. IDENTIFYING NUMBERS.

(a) Supplying Of Identifying Numbers.—When required by regulations prescribed by the Secretary:

(1) Inclusion in returns.—Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) Furnishing number to other persons.—Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person or whose identifying number is required to be shown on a return of another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) Furnishing number of another person.—Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

(4) Furnishing identifying number of income tax return preparer.—Any return or claim for refund prepared by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed. For purposes of this paragraph, the terms "return" and "claim for refund" have the respective meanings given to such terms by section 6696(e).

For purposes of this subsection, the identifying number of an individual (or his estate) shall be such individual's social security account number.

(b) Limitation.—

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with respect to each beneficiary of such estate or trust.

(c) Requirement Of Information.—For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number to any person.

(d) Use Of Social Security Account Number.—The social security account number issued to an individual for purposes of section 205(c)(2)(A) of the Social Security Act shall, except as shall otherwise be specified under regulations of the Secretary, be used as the identifying number for such individual for purposes of this title.

(e) Furnishing Number for Certain Dependents.—If—

(1) any taxpayer claims an exemption under section 151 for any dependent on a return for any taxable year, and

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[102] P.L. 101-508, §5111(b)(1), added paragraph (7).

(2) such dependent has attained the age of 1 year[103] before the close of such taxable year,

such taxpayer shall include on such return the identifying number (for purposes of this title) of such dependent.

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SEC. 6305. COLLECTION OF CERTAIN LIABILITY.

(a) In General.—Upon receiving a certification from the Secretary of Health, Education, and Welfare, under section 452(b) of the Social Security Act with respect to any individual, the Secretary shall assess and collect the amount certified by the Secretary of Health, Education, and Welfare, in the same manner, with the same powers, and (except as provided in this section) subject to the same limitations as if such amount were a tax imposed by subtitle C the collection of which would be jeopardized by delay, except that—

(1) no interest or penalties shall be assessed or collected,

(2) for such purposes, paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply,

(3) there shall be exempt from levy so much of the salary, wages, or other income of an individual as is being withheld therefrom in garnishment pursuant to a judgment entered by a court of competent jurisdiction for the support of his minor children, and

(4) in the case of the first assessment against an individual for delinquency under a court or administrative order against such individual for a particular person or persons, the collection shall be stayed for a period of 60 days immediately following notice and demand as described in section 6303.

(b) Review Of Assessments And Collections.—No court of the United States, whether established under article I or article III of the Constitution, shall have jurisdiction of any action, whether legal or equitable, brought to restrain or review the assessment and collection of amounts by the Secretary under subsection (a), nor shall any such assessment and collection be subject to review by the Secretary in any proceeding. This subsection does not preclude any legal, equitable, or administrative action against the State by an individual in any State court or before any State agency to determine his liability for any amount assessed against him and collected, or to recover any such amount collected from him, under this section.

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SEC. 6402. AUTHORITY TO MAKE CREDITS OR REFUNDS.

(a) General Rule.—In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c) and (d)[104], refund any balance to such person.

(b) Credits Against Estimated Tax.—The Secretary is authorized to prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for a preceding taxable year.

(c) Offset Of Past-due Support Against Overpayments.—The amount of any overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State. A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made. This subsection shall be applied to an overpayment prior to its being credited to a person's future liability for an internal revenue tax.

(d) Collection Of Debts Owed To Federal Agencies.—

(1) In general.—Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than[105] past-due support

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[103] P.L. 101-508, §11112(a), struck out "2 years" and substituted "1 year".

[104] P.L. 98-369, §2653(b)(2), struck out "subsection (c)" and substituted "subsections (c) and (d)", applicable to refunds payable after December 31, 1985, and before January 1, 1988.

P.L. 100-203, §9402(a), amended that effective date by striking out "January" and substituting "July".

P.L. 100-485, §701(a), struck out "before July 1, 1988" and substituted "on or before January 10, 1994".

[105] P.L. 101-508, §5129(c)(1)(A), struck out "any OASDI overpayment and".

subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

(2) Priorities for offset.—Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) Treatment of OASDI overpayments.—

(A) Requirements.—Paragraph (1) shall apply with respect to an OASDI overpayment only if the requirements of paragraphs (1) and (2) of section 3720A(f) of title 31, United States Code, are met with respect to such overpayment.

(B) Notice; protection of other persons filing joint return.—

(i) Notice.—In the case of a debt consisting of an OASDI overpayment, if the Secretary determines upon receipt of the notice referred to in paragraph (1) that the refund from which the reduction described in paragraph (1)(A) would be made is based upon a joint return, the Secretary shall—

(I) notify each taxpayer filing such joint return that the reduction is being made from a refund based upon such return, and

(II) include in such notification a description of the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(ii) Adjustments based on protections given to other taxpayers on joint return.—If the other person filing a joint return with the person owing the OASDI overpayment takes appropriate action to secure his or her proper share of the refund subject to reduction under this subsection, the Secretary shall pay such share to such other person. The Secretary shall deduct the amount of such payment from amounts which are derived from subsequent reductions in refunds under this subsection and are payable to a trust fund referred to in subparagraph (C).

(C) Deposit of amount of reduction into appropriate trust fund.—In lieu of payment, pursuant to paragraph (1)(B), of the amount of any reduction under this subsection to the Secretary of Health and Human Services, the Secretary shall deposit such amount in the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, whichever is certified to the Secretary as appropriate by the Secretary of Health and Human Services.

(D) OASDI overpayment.—For purposes of this paragraph, the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.[106]

(e) Review Of Reductions.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency to which the amount of such reduction was paid or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act[107]. [108]

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[106] P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 10, 1994*.

*P.L. 100-203, §9402(a), and P.L. 100-485, §701(a), amended the effective date thereby making it January 10, 1994.

P.L. 101-508, §5129(c)(1)(B), amended paragraph (3) in its entirety.

[107] P.L. 101-508, §5129(c)(2), inserted "or any such action against the Secretary of Health and Human Services which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act".

[108] P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 10, 1994*.

*P.L. 100-203, §9402(a), and P.L. 100-485, §701(a), amended the effective date thereby making it January 10, 1994.

(f) Federal Agency.—For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).[109]

(g) Treatment Of Payments To States.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a State shall be treated as a payment to the person or persons making the overpayment.[110]

(h) Cross Reference.—For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

(i) Refunds to Certain Fiduciaries of Insolvent Members of Affiliated Groups.—Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.

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SEC. 6413. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) Adjustment Of Tax.—

(1) General rule.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary may by regulations prescribe.

(2) United states as employer.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or american samoa as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) District of columbia as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125 shall be deemed a separate employer.

(5) States and political subdivisions as employer.—For purposes of this subsection, in the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Overpayments Of Certain Employment Taxes.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remuneration and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary may by regulations prescribe.

(c) Special Refunds.—

(1) In general.—If by reason of an employee receiving wages from more than one employer during a calendar year the wages received by him during such year exceed the contribution and benefit base (as determined under section 230 of the

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[109] P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 10, 1994*.

*P.L. 100-203, §9402(a), and P.L. 100-485, §701(a), amended the effective date thereby making it January 10, 1994.

[110] P.L. 98-369, §2653(b)(1), added this subsection, applicable to refunds payable after December 31, 1985, and before January 10, 1994*.

*P.L. 100-203, §9402(a), and P.L. 100-485, §701(a), amended the effective date thereby making it January 10, 1994.

Social Security Act) which is effective with respect to such year, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 or section 3201, or by both such sections, and deducted from the employee's wages (whether or not paid to the Secretary), which exceeds the tax with respect to the amount of such wages received in such year which is equal to such contribution and benefit base. The term "wages" as used in this paragraph shall, for purposes of this paragraph, include "compensation" as defined in section 3231(e).

(2) Applicability in case of federal and state employees, employees of certain foreign affiliates, and governmental employees in Guam, American Samoa, and the District of Columbia—

(A) Federal employees.—In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer; and the term "wages" includes for purposes of this subsection the amount, not to exceed an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) for any calendar year with respect to which such contribution and benefit base is effective, determined by each such head or agent as constituting wages paid to an employee.

(B) State employees.—For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security Act has been paid to the Secretary.

(C) Employees of certain foreign affiliates.—For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121*(l)* as would be wages if such services constituted employment; the term "employer" includes any American employer which has entered into an agreement pursuant to section 3121*(l)*; the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121*(l)*, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121*(l)* has been paid to the Secretary.

(D) Governmental employees in Guam.—In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(E) Governmental employees in American Samoa.—In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(c) shall, for purposes of this subsection, be deemed a separate employer.

(F) Governmental employees in the District of Columbia.—In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Mayor of the District of Columbia and each agent designated by him who makes a return pursuant to section 3125(d) shall, for purposes of this subsection, be deemed a separate employer.

(G) Employees of states and political subdivisions.—In the case of remuneration received from a State or any political subdivision thereof (or any instrumentality of any one or more of the foregoing which is wholly owned thereby) during any calendar year, each head of an agency or instrumentality, and each agent designated by either, who makes a return pursuant to section 3125(a) shall, for purposes of this subsection, be deemed a separate employer.

(3) Separate application for hospital insurance taxes.—In applying this subsection with respect to—

(A) the tax imposed by section 3101(b) (or any amount equivalent to such tax), and

(B) so much of the tax imposed by section 3201 as is determined at a rate not greater than the rate in effect under section 3101(b),

the applicable contribution base determined under section 3121(x)(2) for any calendar year shall be substituted for "contribution and benefit base (as determined under section 230 of the Social Security Act)" each place it appears.[111]

(d) Refund Or Credit Of Federal Unemployment Tax.—Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be allowed or paid with respect to such overpayment.

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SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

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(d) Special Rules Applicable to Income Taxes.—

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(5) Special period of limitation with respect to self-employment tax in certain cases.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health and Human Services.

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SEC. 6621. Determination of rate of interest.

(a) General rule.—

(1) Overpayment rate.—The overpayment rate established under this section shall be the sum of—

(A) the Federal short-term rate determined under subsection (b), plus

(B) 2 percentage points.

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SEC. 6654. FAILURE BY INDIVIDUAL TO PAY ESTIMATED INCOME TAX.

(a) Addition to the tax.—Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying—

(1) the underpayment rate established under section 6621,

(2) to the amount of the underpayment,

(3) for the period of the underpayment.

(b) Amount of underpayment; Period of underpayment.—For purposes of subsection (a)—

(1) Amount.—The amount of the underpayment shall be the excess of—

(A) the required installment, over

(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) Period of underpayment.—The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

(A) the 15th day of the 4th month following the close of the taxable year, or

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[111] P.L. 101-508, §11331(d)(1), amended paragraph (3) in its entirety.

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) ORDER OF CREDITING PAYMENTS.—For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) NUMBER OF REQUIRED INSTALLMENTS; DUE DATES.—For purposes of this section—

(1) PAYABLE IN 4 INSTALLMENTS.—There shall be 4 required installments for each taxable year.

(2) TIME FOR PAYMENT OF INSTALLMENTS.—

In the case of the following required installments:	**The due date is:**
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

(d) AMOUNT OF REQUIRED INSTALLMENTS.—For purposes of this section—

(1) AMOUNT.—

(A) IN GENERAL.—Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) REQUIRED ANNUAL PAYMENT.—For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

(i) 90 percent of the tax shown on the return for the taxable year (or, if no return is filed, 90 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

(2) LOWER REQUIRED INSTALLMENT WHERE ANNUALIZED INCOME INSTALLMENT IS LESS THAN AMOUNT DETERMINED UNDER PARAGRAPH (1).—

(A) IN GENERAL.—In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)—

(i) the amount of such required installment shall be the annualized income installment, and

(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

(B) DETERMINATION OF ANNUALIZED INCOME INSTALLMENT.—In the case of any required installment, the annualized income installment is the excess (if any) of—

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) SPECIAL RULES.—For purposes of this paragraph—

(i) ANNUALIZATION.—The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) APPLICABLE PERCENTAGE.—

In the case of the following required installments:	**The applicable percentage is:**
1st	22.5
2nd	45
3rd	67.5
4th	90.

(iii) ADJUSTED SELF-EMPLOYMENT INCOME.—The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

(e) Exceptions.—

(1) Where tax is small amount.—No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $500.

(2) Where no tax liability for preceding taxable year.—No addition to tax shall be imposed under subsection (a) for any taxable year if—

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

(3) Waiver in certain cases.—

(A) In general.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals.—No addition to tax shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that—

(i) the taxpayer—

(I) retired after having attained age 62, or

(II) became disabled,

in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and

(ii) such underpayment was due to reasonable cause and not to willful neglect.

(f) Tax Computed After Application of Credits Against Tax.—For purposes of this section, the term "tax" means—

(1) the tax imposed by chapter 1 (other than any increase in such tax by reason of section 143(m)), plus

(2) the tax imposed by chapter 2, minus

(3) the credits against tax provided by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages).

(g) Application of Section in Case of Tax Withheld on Wages.—

(1) In general.—For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application.—The taxpayer may apply paragraph (1) separately with respect to—

(A) wage withholding, and

(B) all other amounts withheld for which credit is allowed under section 31.

(h) Special Rule Where Return Filed on or Before January 31.—If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

(i) Special Rules for Farmers and Fishermen.—For purposes of this section—

(1) In general.—If an individual is a farmer or fisherman for any taxable year—

(A) there shall be only 1 required installment for the taxable year,

(B) the due date for such installment shall be January 15 of the following taxable year,

(C) the amount of such installment shall be equal to the required annual payment (determined under subsection (d)(1)(B) by substituting "66 2/3 percent" for "90 percent", and

(D) subsection (h) shall be applied—

(i) by substituting "March 1" for "January 31", and

(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

(2) Farmer or fisherman defined.—An individual is a farmer or fisherman for any taxable year if—

(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 66 2/3 percent of the total gross income from all sources for the taxable year, or

(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66 2/3 percent of the total gross income from all sources shown on such return.

(j) Special Rules for Nonresident Aliens.—In the case of a nonresident alien described in section 6072(c):

(1) Payable in 3 Installments.—There shall be 3 required installments for the taxable year.

(2) Time for payment of installments.—The due dates for required installments under this subsection shall be determined under the following table:

In the case of the following required installments:	**The due date is:**
1st	June 15
2nd	September 15
3rd	January 15 of the following taxable year.

(3) Amount of required installments.—

(A) First required installment.—In the case of the first required installment, subsection (d) shall be applied by substituting "50 percent" for "25 percent" in subsection (d)(1)(A).

(B) Determination of applicable percentage.—The applicable percentage for purposes of subsection (d)(2) shall be determined under the following table:

In the case of the following required installments:	**The applicable percentage is:**
1st	45
2nd	67.5
3rd	90.

(k) Fiscal Years and Short Years.—

(1) Fiscal years.—In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year.—This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(l) Estates and Trusts.—

(1) In general.—Except as otherwise provided in this subsection, this section[112] shall apply to any estate or trust.

(2) Exception for estates and certain trusts.—With respect to any taxable year ending before the date 2 years after the date of the decedent's death, this section shall not apply to

(A) the estate of such decedent, or

(B) any trust—

(i) all of which was treated (under subpart E or part I of subchapter J of chapter 1) as owned by the decedent, and

(ii) to which the residue of the decedent's estate will pass under his will (or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration)[113].

(3) Exception for charitable trusts and private foundations.—This section shall not apply to any trust which is subject to the tax imposed by section 511 or which is a private foundation.

(4) Special rule for annualizations.—In the case of any estate or trust to which this section applies, subsection (d)(2)(B)(i) shall be applied by substituting "ending before the date 1 month before the due date for the installment" for "ending before the due date for the installment".

(m) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

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[112] P.L. 101-239, §7811(j)(5), struck out "subsection" and substituted "section".

[113] P.L. 101-239, §7811(j)(6), inserted "(or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration)".

SEC. 7213. UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) RETURNS AND RETURN INFORMATION.—

(1) FEDERAL EMPLOYEES AND OTHER PERSONS.—It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) STATE AND OTHER EMPLOYEES.—It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i),,[114] (l)(6), (7), (8), (9), (10), or (12)[115] or (m)(2), (4), (6), or (7)[116] of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) OTHER PERSONS.—It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) SOLICITATION.—It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

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SEC. 7852. OTHER APPLICABLE RULES.

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(b) REFERENCE IN OTHER LAWS TO INTERNAL REVENUE CODE OF 1939.—Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

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SEC. 7873. INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.

(a) IN GENERAL.—

(1) INCOME AND SELF-EMPLOYMENT TAXES.—No tax shall be imposed by subtitle A on income derived—

(A) by a member of an Indian tribe directly or through a qualified Indian entity, or

(B) by a qualified Indian entity,

from a fishing rights-related activity of such tribe.

(2) EMPLOYMENT TAXES.—No tax shall be imposed by subtitle C on remuneration paid for services performed in a fishing rights-related activity of an Indian tribe by a member of such tribe for another member of such tribe or for a qualified Indian entity.

(b) DEFINITIONS.—For purposes of this section—

(1) FISHING RIGHTS-RELATED ACTIVITY.—The term "fishing rights-related activity" means, with respect to an Indian tribe, any activity directly related to harvesting, processing, or transporting fish harvested in the exercise of a recognized fishing right of such tribe or to selling such fish but only if substantially all of such harvesting was performed by members of such tribe.

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[114] As in original. One comma should be stricken.

[115] P.L. 101-239, §6202(a)(1)(C), struck out "or (10)" and substituted "(10), or (12)".

[116] P.L. 101-508, §5111(b)(3), struck out "(m)(2), (4), or (6)" and substituted "(m)(2), (4), (6), or (7)".

(2) RECOGNIZED FISHING RIGHTS.—The term "recognized fishing rights" means, with respect to an Indian tribe, fishing rights secured as of March 17, 1988, by a treaty between such tribe and the United States or by an Executive order or an Act of Congress.

(3) QUALIFIED INDIAN ENTITY.—

(A) IN GENERAL.—The term "qualified Indian entity" means, with respect to an Indian tribe, any entity if—

(i) such entity is engaged in a fishing rights-related activity of such tribe,

(ii) all of the equity interests in the entity are owned by qualified Indian tribes, members of such tribes, or their spouses,

(iii) except as provided in regulations, in the case of an entity which engages to any extent in any substantial processing or transporting of fish, 90 percent or more of the annual gross receipts of the entity is derived from fishing rights-related activities of one or more qualified Indian tribes each of which owns at least 10 percent of the equity interests in the entity, and

(iv) substantially all of the management functions of the entity are performed by members of qualified Indian tribes.

For purposes of clause (iii), equity interests owned by a member (or the spouse of a member) of a qualified Indian tribe shall be treated as owned by the tribe.

(B) QUALIFIED INDIAN TRIBE.—For purposes of subparagraph (A), an Indian tribe is a qualified Indian tribe with respect to an entity if such entity is engaged in a fishing rights-related activity of such tribe.

(c) SPECIAL RULES.—

(1) DISTRIBUTIONS FROM QUALIFIED INDIAN ENTITY.—For purposes of this section, any distribution with respect to an equity interest in a qualified Indian entity of an Indian tribe to a member of such tribe shall be treated as derived by such member from a fishing rights-related activity of such tribe to the extent such distribution is attributable to income derived by such entity from a fishing rights-related activity of such tribe.

(2) DE MINIMIS UNRELATED AMOUNTS MAY BE EXCLUDED.—If, but for this paragraph, all but a de minimis amount—

(A) derived by a qualified Indian tribal entity, or by an individual through such an entity, is entitled to the benefits of paragraph (1) of subsection (a), or

(B) paid to an individual for services is entitled to the benefits of paragraph (2) of subsection (a),

then the entire amount shall be entitled to the benefits of such paragraph.

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[*Internal References.*—S.S. Act §§201(a) and (g); 205(c); 208(a); 209(a); 1106(a); and 1107(a) cite the Internal Revenue Code of 1939 and S.S. Act §§201(a), (b), and (g); 202(v); 203(f) and (k); 205(c) and (p); 208(a); 209(a), (b), (f), (g), (i), (j), and (k); 210(a), (p), and (q); 211(a), (c), (d), (e), and (h); 215(a); 216(j); 218(e); 229(b); 230(c); 232; 302(a); 303(a); 402(a) and (g); 408(i); 452(b); 462(g); 464(a); 706(d); 709(a); 710(a) and (b); 901(b), (c), (d) and (g); 903(b); 904(g); 1101(a); 1107(a); 1131(a); 1137(a), (b) and (c); 1141(b) and (g); 1202(b); 1611(d); 1612(a); 1631(b) and (e); 1817(a) and (f); 1862(b); 1877(h); 1886(b); and 2002(a) cite the Internal Revenue Code of 1954 and 1986. S.S. Act §§302(a); 303(a); 901(b), (c) and (d); and 904(g) cite the Federal Unemployment Tax Act [§§3301-3311 of the IRC]. S.S. Act title IV, part D and §§207; 218; 232; 1106; 1131; and 1201 catchlines and §§201(a), (b), and (g); 202(v); 205(c); 208(a), 209(a), (b), (g) and (j); 210(a) and (q); 211(a) and (c); 218(e); 229(b); 230(c); 302(a); 303(a); 454(8); 462(g); 706(d); 709(a); 710(a) and (b); 901(b); 1202(b); 1612(a); 1631(b); 1817(a) and (f); and 1886(b) have footnotes referring to P.L. 83-591.]

P.L. 84-885, Approved August 1, 1956 (70 Stat. 890)

[State Department Basic Authorities Act of 1956]

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SEC. 33. [22 U.S.C. 2705] The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

(2) The report, designated as a "Report of Birth Abroad of a Citizen of the United States", issued by a consular officer to document a citizen born abroad.

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[*Internal Reference.*—S.S. Act §205 catchline has a footnote referring to P.L. 84-885.]

P.L. 86-372, Approved September 23, 1959 (73 Stat. 654)

Housing Act of 1959

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SEC. 202. [12 U.S.C. 1701q]

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(h)(1) Of the amounts made available in appropriation Acts for loans under subsection (a)(4)(C) for any fiscal year commencing after September 30, 1987, not less than 15 percent shall be available for loans for the development costs of housing for handicapped families. If the amount required for any such fiscal year for approvable applications for loan under this subsection is less than the amount available under this paragraph, the balance shall be made available for loans under other provisions of this section.

(2) The Secretary shall take such actions as may be necessary to ensure that—

(A) funds made available under this subsection will be used to support a variety of methods of meeting the needs primarily of nonelderly handicapped families by providing a variety of housing options, ranging from small group homes to independent living complexes; and

(B) housing for handicapped families assisted under this subsection will provide families occupying units in such housing with an assured range of services specified in subsection (f), will provide such families with opportunities for optimal independent living and participation in normal daily activities, and will facilitate access by such families to the community at large and to suitable employment opportunities within such community.

(3)(A) In allocating funds under this subsection, and in processing applications for loans under this section and assistance payments under paragraph (4), the Secretary shall adopt such distinct standards and procedures as the Secretary determines appropriate due to differences between housing for handicapped families and other housing assisted under this section. In adopting such standards, the Secretary shall ensure adequate participation by representatives of the disability community through the provisions available under the Federal Advisory Committee Act.

(B) The Secretary may, on a demonstration basis, determine the feasibility and desirability of reducing processing time and costs for housing for handicapped families by limiting project design to a small number of prototype designs. Any such demonstration shall be limited to the 3-year period following the date of the enactment of the Housing and Community Development Act of 1987, may only involve projects whose sponsors consent to participation in such demonstration, and shall be described in a report submitted by the Secretary to the Congress following completion of such demonstation.

(4)(A) The Secretary shall, to the extent approved in appropriation Acts, enter into contracts with owners of housing for handicapped families receiving loans under, or meeting the requirements of, this section to make monthly payments to cover any part of the costs attributed to units occupied (or, as approved by the Secretary, held for occupancy) by lower income families that is not met from project income. The annual contract amount for any project shall not exceed the sum of the initial annual project rentals for all units and any initial utility allowances for such units, as approved by the Secretary. Any contract amounts not used by a project in any year shall remain available to the project until the expiration of the contract. The term of a contract entered into under this subparagraph shall be 240 months. The annual contract amount may be adjusted by the Secretary if the sum of the project income and the amount of assistance payments available under this subparagraph are inadequate to provide for reasonable project costs. In the case of an intermediate care facility in which there reside families assisted under title XIX of the Social Security Act, project income under this subparagraph shall include the same amount as if such families were being assisted under title XVI of the Social Security Act.

(B) The Secretary shall approve initial project rentals for any project assisted under this subsection based on the determination of the Secretary of the total actual necessary and reasonable costs of developing and operating the project, excluding the costs of the assured range of services under subsection (f), taking into consideration the need to contain costs to the extent practicable and consistent with the purposes of the project and this section.

(C) The Secretary shall require that, during the term of each contract entered into under subparagraph (A), all units in a project assisted under this subsection shall be made available for occupancy by lower income families, as such term is defined in section 3(b)(2) of the United States Housing Act of 1937. The rent payment required of a lower income family shall be determined in accordance with section 3(a) of such Act, except that the gross income of a family occupying an intermediate care facility assisted under title XIX of the Social Security Act shall be the same amount as if the family were being assisted under title XVI of the Social Security Act.

(D) The Secretary shall coordinate the processing of an application for a loan for housing for handicapped families under this section and the processing of an application for assistance payments under this paragraph for such housing.[1]

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[*Internal References.*—S.S. Act §1612(b) cites the Housing Act of 1959 and §1612(b) catchline and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 86-372. P.L. 95-557, §410(b) has a footnote referring to P.L. 86.372.]

P.L. 87-293, Approved September 22, 1961 (75 Stat. 612)

Peace Corps Act

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PEACE CORPS VOLUNTEERS

SEC. 5. [22 U.S.C. 2504]

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(c) Volunteers shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President. The readjustment allowance of each volunteer shall be payable on his return to the United States: *Provided, however,* That, under such circumstances as the President may determine, the accrued readjustment allowance, or any part thereof, may be paid to the volunteer, members of his family or others, during the period of his service, or prior to his return to the United States. In the event of the volunteer's death during the period of his service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582(b) of title 5, United States Code. For purposes of the Internal Revenue Code of 1954 (26 U.S.C.), a volunteer shall be deemed to be paid and to receive each amount of a readjustment allowance to which he is entitled after December 31, 1964, when such amount is transferred from funds made available under this Act to the fund from which such readjustment allowance is payable.

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PEACE CORPS VOLUNTEER LEADERS

SEC. 6. [22 U.S.C. 2505] The President may enroll in the Peace Corps qualified citizens or nationals of the United States whose services are required for supervisory or other special duties or responsibilities in connection with programs under this Act (referred to in this Act as "volunteer leaders"). The ratio of the total number of volunteer leaders to the total number of volunteers in service at any one time shall not exceed one to twenty-five. Except as otherwise provided in this Act, all of the provisions of this Act applicable to volunteers shall be applicable to volunteer leaders, and the term "volunteers" shall include "volunteer leaders": *Provided, however,* That—

(1) volunteer leaders shall be entitled to receive a readjustment allowance at a rate not less than $125 for each month of satisfactory service as determined by the President;

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[1] This subsection remains in effect until October 1, 1991. P.L. 101-625, §801, amends §202 in its entirety, effective October 1, 1991.

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[*Internal References.*—S.S. Act §§205(p), 209(e), and 210(o) cite the Peace Corps Act.]

P.L. 87-543, Approved July 25, 1962 (76 Stat. 172)

Public Welfare Amendments of 1962

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SEC. 141.

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(b) [42 U.S.C. 1382e note] No payment may be made to a State under title I, X, or XIV of the Social Security Act for any period for which such State receives any payments under title XVI of such Act or any period thereafter.

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(f) [42 U.S.C. 1382e note] In the case of any State which has a State plan approved under title XVI of the Social Security Act, any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403, shall, for purposes of section 1603(b) of such Act, be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act.

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[*Internal References.*—S.S. Act §§2(a), 1002(a), and 1402(a) have footnotes referring to P. L. 87-543.]

P.L. 87-781, Approved October 10, 1962 (76 Stat. 780)

Drug Amendments of 1962

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SEC. 107. [21 U.S.C. 321 note]

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(c) * * *

(3) In the case of any drug with respect to which an application filed under section 505(b) of the basic Act is deemed to be an approved application on the enactment date by virtue of paragraph (2) of this subsection—

(A) the amendments made by this Act to section 201(p), and to subsections (b) and (d) of section 505, of the basic Act, insofar as such amendments relate to the effectiveness of drugs, shall not, so long as approval of such application is not withdrawn or suspended pursuant to section 505(e) of that Act, apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application, but shall apply to any changed use, or conditions of use, prescribed, recommended, or suggested in its labeling, including such conditions of use as are the subject of an amendment or supplement to such application pending on, or filed after, the enactment date; and

(B) clause (3) of the first sentence of section 505(e) of the basic Act, as amended by this Act, shall not apply to such drug when intended solely for use under conditions prescribed, recommended, or suggested in labeling covered by such approved application (except with respect to such use, or conditions of use, as are the subject of an amendment or supplement to such approved application, which amendment or supplement has been approved after the enactment date under section 505 of the basic Act as amended by this Act) until whichever of the following first occurs: (i) the expiration of the two-year period beginning with the enactment date; (ii) the effective date of an order under section 505(e) of the basic Act, other than clause (3) of the first sentence of such section 505(e), withdrawing or suspending the approval of such application.

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[*Internal Reference.*—S.S. Act §1862(c) cites the Drug Amendments of 1962.]

P.L. 88-164, Approved October 31, 1963 (77 Stat. 282)

Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963

TITLE I—PROGRAMS FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

Part A—General Provisions

SHORT TITLE

Sec. 100. [42 U.S.C. 6000 note] This title may be cited as the "Developmental Disabilities Assistance and Bill of Rights Act".

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REPORTS

Sec. 107. [42 U.S.C. 6006] (a) By January 1 of each year, the State Planning Council of each State shall prepare and transmit to the Secretary a report concerning activities carried out during the preceding fiscal year with funds paid to the State under part B for such fiscal year. Each such report shall be in a form prescribed by the Secretary by regulation and shall contain—

* * * * * * *

(4) a description of the State Planning Council's response to significant actions taken by the State with respect to any intermediate care facility for the mentally retarded in such State, and with respect to each annual survey report prepared pursuant to section 1902(a)(31)(C) of the Social Security Act and each correction or reduction plan prepared pursuant to section 1922 of such Act;[1] and

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STATE PLANNING COUNCILS

Sec. 124. [42 U.S.C. 6024]

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(b) * * *

(3) Each State Planning Council shall at all times include in its membership representatives of the principal State agencies (including the State agency that administers funds provided under the Rehabilitation Act of 1973, the State agency that administers funds provided under the Education of the Handicapped Act[2], the State agency that administers funds provided under the Older Americans Act of 1965, and the State agency that administers funds provided under title XIX of the Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the State, the State protection and advocacy system established under section 142, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities in that State.

(4) At least one-half of the membership of each State Planning Council shall consist of persons who—

(A) are persons with developmental disabilities;

(B) are parents or guardians of such persons; or

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[1] P.L. 101-496, §6(1)(A), struck out "each annual survey report and plan of corrections for cited deficiencies prepared pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in such State;" and substituted "any intermediate care facility for the mentally retarded in such State, and with respect to each annual survey report prepared pursuant to section 1902(a)(31)(C) of the Social Security Act and each correction or reduction plan prepared pursuant to section 1922 of such Act;".

[2] P.L. 101-476, §901(a)(3), provided that any reference to the "Education of the Handicapped Act" shall be considered a reference to the "Individuals with Disabilities Education Act".

(C) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

and who are not employees of a State agency which receives funds or provides services under this part, who are not managing employees (as defined in section 1126(b) of the Social Security Act) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1124(a)(3) of the Social Security Act) with respect to such an entity.

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PART C—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

PURPOSE

SEC. 141. [42 U.S.C. 6041] It is the purpose of this part to provide for allotments to support a system in each State to protect the legal and human rights of persons with developmental disabilities in accordance with section 142.

SYSTEM REQUIRED

SEC. 142. [42 U.S.C. 6042] (a) In order for a State to receive an allotment under part B—

(1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities;

(2) such system must—

(A) have the authority to—

(i) pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such persons within the State who are or who may be eligible for treatment, services, or habilitation, or who are being considered for a change in living arrangements, with particular attention to members of minority groups; and

(ii) provide information on and referral to programs and services addressing the needs of persons with developmental disabilities;

(B) have the authority to investigate incidents of abuse and neglect of persons with developmental disabilities if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(C) on an annual basis, develop a statement of objectives and priorities, and provide to the public, including persons with disabilities and their representatives, as appropriate, the developmental disability council and the university affiliated program (if applicable within a State), an opportunity to comment on the objectives and priorities established by, and activities of, the system, including—

(i) the objectives and priorities for the system's activities for each year, and the rationale for the establishment of such objectives; and

(ii) the coordination with the advocacy programs set out in the Rehabilitation Act of 1973, the Older Americans Act of 1965, and the Protection and Advocacy for the Mentally Ill Act.[3]

(D) establish a grievance procedure for clients or prospective clients of the system to assure that persons with developmental disabilities have full access to services of the system;

(E) not be administered by the State Planning Council;

(F) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities; and

(G) have access to all records of—

(i) any person with developmental disabilities who is a client of the system if such person, or the legal guardian, conservator, or other legal representative of such person, has authorized the system to have such access;[4]

(ii) any person with developmental disabilities—

(I) who, by reason of the mental or physical condition of such person, is unable to authorize the system to have such access;

(II) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

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[3] P.L. 101-496, §15(1)(A), amended subparagraph (C) in its entirety.
As in original. Period should be a semicolon.
[4] P.L. 101-496, §15(1)(B), struck out "and".

(III) with respect to whom a complaint has been received by the system or with respect to whom as a result of monitoring or other activities[5] there is probable cause to believe that such person has been subject to abuse or neglect; and[6]

(iii) any person with a developmental disability who has a legal guardian, conservator, or other legal representative with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe the health or safety of the individual is in serious and immediate jeopardy whenever—

(I) such representatives have been contacted by such system upon receipt of the name and address of such representatives;

(II) such system has offered assistance to such representatives to resolve the situation; and

(III) such representatives have failed or refused to act on behalf of the person;[7]

(3) the State must provide assurances to the Secretary that funds allotted to the State under this section will be used to supplement and increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds;

(4) the State must provide assurances to the Secretary that such system will be provided with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to section 1902(a)(31)(B) of the Social Security Act with respect to any intermediate care facility for the mentally retarded in the State within 30 days after the completion of each such report or plan; and

(5) the State must provide assurances satisfactory to the Secretary that the agency implementing the system will not be redesignated unless there is good cause for the redesignation and unless—

(A) notice has been given of the intention to make such redesignation to the agency that is serving as the system including the good cause for such redesignation and the agency has been given an opportunity to respond to the assertion that good cause has been shown;

(B) timely notice and opportunity for public comment in an accessible format has been given to persons with developmental disabilities or their representatives; and

(C) the system has the opportunity to appeal to the Secretary that the redesignation was not for good cause[8].

(b)(1) To assist States in meeting the requirements of subsection (a), the Secretary shall allot to the States the amounts appropriated under section 143. Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsection (a)(1) and subsection (d) of section 125, except that in any case in which—

(A) the total amount appropriated under section 143 for a fiscal year is at least $20,000,000—

(i) the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $107,000; and

(ii) the allotment to each of the several States, Puerto Rico, and the District of Columbia for such fiscal year shall not be less than $200,000; or

(B) the total amount appropriated under section 143 for a fiscal year is less than $20,000,000, the allotment to each State (other than Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) shall not be less than $150,000, and the allotment of each of American Samoa, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for such fiscal year shall not be less than $80,000.

(2) In any case in which the total amount appropriated under section 143 for a fiscal year exceeds the total amount appropriated under such section for the preceding fiscal year by a percentage greater than the most recent percentage change in the Consumer Price Index published by the Secretary of Labor under section 100(c)(1) of the Rehabilitation Act of 1973, the Secretary shall[9] increase each of the minimum

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[5] P.L. 101-496, §15(1)(C), inserted "as a result of monitoring or other activities".

[6] P.L. 101-496, §15(1)(D), inserted "and".

[7] P.L. 101-496, §15(1)(E), added clause (iii).

[8] P.L. 101-496, §15(1)(F), struck out "unless notice has been given of the intention to make such redesignation to persons with developmental disabilities or their representatives" and substituted "unless—" and subparagraphs (A), (B) and (C).

[9] P.L. 101-496, §15(2), struck out "may" and substituted "shall".

allotments under subparagraphs (A) and (B) of paragraph (1) by an amount which bears the same ratio to the amount of such minimum allotment (including any increases in such minimum allotment under this paragraph for prior fiscal years) as the amount which is equal to the difference between—

(A) the total amount appropriated under section 143 for the fiscal year for which the increase in minimum allotment is being made, minus

(B) the total amount appropriated under section 143 for the immediately preceding fiscal year,

bears to the total amount appropriated under section 143 for such preceding fiscal year.

(3) A State may use not more than 5 percent of any allotment under this subsection for the costs of monitoring the administration of the system required under subsection (a).

(4) Notwithstanding paragraph (1), if the aggregate of the amounts of the allotments to be made in accordance with such paragraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under section 143, the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such paragraph as the total of the amounts appropriated for that year under section 143 bears to the aggregate amount required to make an allotment to each of the States in accordance with paragraph (1).

(c) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available to such State for the next fiscal year for the purposes for which such amount was paid.

(d) In States in which the system is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, such governing board shall be selected according to the policies and procedures of the system, except that—

(1) the governing board shall be composed of members who broadly represent or are knowledgeable about the needs of the individuals served by the system;

(2) not more than 1/3 of the membership of the governing board may be appointed by the chief executive officer of the State involved, in the case of any State in which such officer has the authority to appoint the membership of the board; and

(3) any vacancy in the board shall be filled not later than 60 days after the date on which the vacancy occurs.[10]

(e) As used in this section the term "records" includes reports prepared or received by any staff of a facility rendering care or treatment, or reports prepared by an agency or staff person charged with investigating reports of incidents of abuse, neglect, injury or death occurring at such facility that describes incidents of abuse or neglect, injury or death occurring at such facility and the steps taken to investigate such incidents, and discharge planning records.[11]

(f) If the laws of a State prohibit a system from obtaining access to records of persons with developmental disabilities the provisions of subparagraph (A) of paragraph (2) of subsection (a) shall not apply to such system before—

(1) the date such system is no longer subject to such prohibition; or

(2) the expiration of the 1-year period beginning on the date of enactment of this Act, whichever occurs first.[12]

(g)(1) Nothing in this Act shall preclude the systems described under this section from bringing a suit on behalf of persons with developmental disabilities against a State, or agencies or instrumentalities of a State.

(2) Amounts received pursuant to paragraph (1) through court judgments and used by the system are limited to furthering the purpose of this part and shall not be used to augment payments to legal contractors or to award personal bonuses.[13]

(h) Nothwithstanding any other provision of law, the Secretary shall pay directly to any system which complies with the provisions of this section the amount of such system's allotment under this section, unless the system delegates otherwise.[14]

AUTHORIZATION OF APPROPRIATIONS

SEC. 143. [42 U.S.C. 6043] For allotments under section 142, there are authorized to be appropriated $24,200,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.[15]

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[10] P.L. 101-496, §15(3), added subsection (d).
[11] P.L. 101-496, §15(3), added subsection (e).
[12] P.L. 101-496, §15(3), added subsection (f).
[13] P.L. 101-496, §15(3), added subsection (g).
[14] P.L. 101-496, §15(3), added subsection (h).
[15] P.L. 101-496, §16, struck out "$20,000,000 for fiscal year 1988, $22,000,000 for fiscal year 1989, and $24,200,000 for fiscal year 1990." and substituted "$24,200,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993."

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[*Internal References.*—S.S. Act §1919(c) cites the Developmental Disabilities Assistance and Bill of Rights Act. S.S. Act titles XI and XIX catchlines and §1902(a) have footnotes referring to P.L. 88-164.]

P.L. 88-210, Approved December 18, 1963 (77 Stat. 403)

Carl D. Perkins Vocational and Applied Technology Education Act[1]

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STATE ADMINISTRATION

SEC. 111. [20 U.S.C. 2321] (a)(1) Any State desiring to participate in the vocational education program authorized by this Act shall, consistent with State law, designate or establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State vocational education program. The responsibilities of the State board shall include—

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(E) the adoption of such procedures as the State board considers necessary to implement State level coordination with the State job training coordinating council to encourage cooperation in the conduct of their respective programs.

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STATE COUNCIL ON VOCATIONAL EDUCATION

SEC. 112. [20 U.S.C. 2322] (a) Each State which desires to participate in vocational education programs authorized by this Act for any fiscal year shall establish a State council, which shall be appointed by the Governor or, in the case of States in which the members of the State board of education are elected (including election by the State legislature), by such board. Each State council shall be composed of 13 individuals, and shall be broadly representative of citizens and groups within the State having an interest in vocational education. Each State council shall consist of—

(1) seven individuals who are representative of the private sector in the State who shall constitute a majority of the membership—

(A) five of whom shall be representative of business, industry, trade organizations[2] and agriculture including—

(i) one member who is representative of small business concerns; and

(ii) one member who is a private sector member of the State job training coordinating council (established pursuant to section 122 of the Job Training Partnership Act), and

(B) two of whom shall be representatives of labor organizations;

(2) six individuals who are representative of secondary and postsecondary vocational institutions (equitably distributed among such institutions), career guidance and counseling organizations within the State, individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations (including women, the disadvantaged, the handicapped, individuals with limited English proficiency, and minorities) and of whom one member shall be representative of special education and may include members of vocational student organizations and school board members.[3]

In selecting individuals under .subsection (a) to serve on the State council, due consideration shall be given to the appointment of individuals who serve on a private industry council under the Job Training Partnership Act, or on State councils established under other related Federal Acts. No employee of the State board shall serve on the State council.[4]

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[1] P.L. 101-392, §1(b), amended the title to read:
"Carl D. Perkins Vocational and Applied Technology Education Act".

[2] P.L. 101-392, §112(1), inserted "trade organizations".

[3] P.L. 101-392, §112(2), struck out the period and inserted "and may include members of vocational student organizations and school board members.".

[4] P.L. 101-392, §112(3), added this sentence.

(d) During each State plan period described in section 113(a)(1), each State council shall—

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(9) analyze and review corrections education programs; and

(10)(A) evaluate at least once every 2 years—

(i) the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(ii) the vocational education program delivery system assisted under this Act, and the job training program delivery system assisted under the Job Training Partnership Act, in terms of such delivery systems' adequacy and effectiveness in achieving the purposes of each of the 2 Acts; and

(iii) make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the Job Training Partnership Act;

(B) comment on the adequacy or inadequacy of State action in implementing the State plan;

(C) make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(D) advise the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor regarding such evaluation, findings, and recommendations.[5]

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SEC. 113. [20 U.S.C. 2323] STATE PLAN

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(b) Contents.—Each State plan shall—

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(14) describe the methods proposed for the joint planning and coordination of programs carried out under this Act with programs conducted under the Job Training Partnership Act, the Adult Education Act, chapter 1 of title I of the Elementary and Secondary Education Act of 1965, the Individuals with Disabilities Education Act[6], and the Rehabilitation Act of 1973, and with apprenticeship programs;[7]

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SEC. 114. [20 U.S.C. 2324] STATE PLAN APPROVAL.

(a) In General.—The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other 2-year postsecondary institutions primarily engaged in providing postsecondary vocational education, and the State agency responsible for secondary education. The State board shall, in developing such plan, take into consideration the relative training and retraining needs of secondary, adult, and postsecondary students, and shall include the State's rationale for distribution of funds. If a State agency finds that a portion of the final State plan is objectionable, such agency shall file such objections with the State board. The State board shall respond to any objections of such agency in submitting such plan to the Secretary. The Secretary shall consider such comments in reviewing the State plan.

(b) Time for Submission; Approval.—Each State plan shall be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which such plan is to be in effect. The Secretary shall approve each plan before the expiration of the 60-day period beginning on the date the plan is submitted, if the plan meets the requirements of section 113 and is of sufficient quality to meet the objectives of this Act (including the objective of developing and implementing program evaluations and improvements), and shall subsequently take appropriate actions to monitor the State's compliance with the provisions of its plan and the requirements of this Act on a regular basis. The Secretary shall not finally disapprove a State plan except after giving reasonable notice and an opportunity for a hearing to the State board.[8]

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[5] P.L. 101-392, §112(6), amended paragraph (9) in its entirety and added paragraph (10).

[6] P.L. 101-476, §901(a)(2), struck out "Education of the Handicapped Act" and substituted "Individuals with Disabilities Education Act".

[7] P.L. 101-392, §113, amended §113 in its entirety.

SEC. 115. [20 U.S.C. 2325] STATE AND LOCAL STANDARDS AND MEASURES.

(a) General Authority.—Each State board receiving funds under this Act shall develop and implement a statewide system of core standards and measures of performance for secondary and postsecondary vocational education programs. Each State board receiving funds under this Act, before the expiration of the 30-day period beginning on the date of the enactment of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, shall appoint the State Committee of Practitioners (in this section referred to as the "Committee") as prescribed by section 512(a) after consulting with local school officials representing eligible recipients, and representatives of organized labor, business, superintendents, community-based organizations, private industry councils established under section 102(a) of the Job Training Partnership Act, State councils, parents, special populations, correctional institutions, the administrator appointed under section 111(b)(1), the State administrator of programs assisted under part B of the Individuals with Disabilities Education Act[9], the State administrator of programs assisted under chapter 1 of title I of the Elementary and Secondary Education Act, the State administrator of programs for students of limited English proficiency, and guidance counselors. Such system shall be developed and implemented before the end of the 2-year period beginning on the date of the enactment of the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 and shall apply to all programs assisted under this Act. Eligible recipients may make local modifications to such system based on economic, geographic, or demographic factors, or the characteristics of the population to be served. Such modifications shall conform to the assessment criteria contained in the State plan. The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to a draft State proposal, which the State board shall develop, for a system of core standards and measures of performance for vocational programs.

(b) Requirements.—Each system developed under subsection (a) shall include—

(1) measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) 1 or more measures of performance, which shall include only—

(A) competency attainment;

(B) job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter;

(C) retention in school or completion of secondary school or its equivalent; and

(D) placement into additional training or education, military service, or employment;

(3) incentives or adjustments that are—

(A) designed to encourage service to targeted groups or special populations; and

(B) for each student, consistent with the student's individualized education program developed under section 614(a)(5) of the Education of the Handicapped Act, where appropriate; and

(4) procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(c) Consistency With Other Programs.—In developing the standards and measures included in a system developed under subsection (a), the State board shall take into consideration—

(1) standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act; and

(2) standards prescribed by the Secretary of Labor under section 106 of the Job Training Partnership Act.[10]

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AUTHORIZATION OF GRANTS

Sec. 332.[11] [20 U.S.C. 2392]

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[8] P.L. 101-392, §114, amended §114 in its entirety.
[9] See footnote 6.
[10] P.L. 101-392, §115, amended §115 in its entirety.
[11] P.L. 101-392, §307(a)(2), redesignated §342 as §332.

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(b) Grants to any State under this part shall be used in accordance with State plans and shall provide incentives for the coordination of programs assisted with funds under this part with related efforts under part E and under the Job Training Partnership Act.[12]

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SEC. 521. [20 U.S.C. 2471] DEFINITIONS.

As used in this Act:

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(27) The term "Secretary" means the Secretary of Education.

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(34) The term "State board" means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

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(36) The term "State council" means the State council on vocational education established in accordance with section 112.

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(41) The term "vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.[13]

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[*Internal Reference.*—S.S. Act §483(c) cites the Carl D. Perkins Vocational Education Act.]

P.L. 88-352, Approved July 2, 1964 (78 Stat. 241)

Civil Rights Act of 1964

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Title VI—Nondiscrimination in Federally Assisted Programs

SEC. 601. [42 U.S.C. 2000d] No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. [42 U.S.C. 2000d-1] Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

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[12] P.L. 101-392, §307(d)(2), amended §332(b).
[13] P.L. 101-392, §502, amended §521 in its entirety.

Sec. 603. [42 U.S.C. 2000d-2] Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604. [42 U.S.C. 2000d-3] Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. [42 U.S.C. 2000d-4] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

Sec. 606. [42 U.S.C. 2000d-4a] For the purposes of this title, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

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[*Internal References.*—S.S. Act §508(a) and (b) cites the Civil Rights Act of 1964 and SS Act titles I, IV, V, VII, IX, X, XI, XIV, XVI (State), XVIII, XIX, and XX catchlines have footnotes referring to P.L. 88-352.]

P.L. 88-525, Approved August 31, 1964 (78 Stat. 703)
Food Stamp Act of 1977

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DEFINITIONS

SEC. 3. [7 U.S.C. 2012] As used in this Act, the term:

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(n) "State agency" means (1) the agency of State government, including the local offices thereof, which has the responsibility for the administration of the federally aided public assistance programs within such State, and in those States where such assistance programs are operated on a decentralized basis, the term shall include the counterpart local agencies administering such programs, and (2) the tribal organization of an Indian tribe determined by the Secretary to be capable of effectively administering a food distribution program under section 4(b) of this Act or a food stamp program under section 11(d) of this Act.

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ELIGIBLE HOUSEHOLDS

SEC. 5. [7 U.S.C. 2014]

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(e) In computing household income for purposes of determining eligibility and benefit levels for households containing an elderly or disabled member and determining benefit levels only for all other households, the Secretary shall allow a standard deduction of $85 a month for each household, except that households in Alaska, Hawaii, Guam, and the Virgin Islands of the United States shall be allowed a standard deduction of $145, $120, $170, and $75, respectively. Such standard deductions shall be adjusted (1) on October 1, 1983, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food and the homeowners' costs and maintenance and repair component of shelter costs, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the fifteen months ending the preceding March 31, (2) on October 1, 1984, to the nearest lower dollar increment to reflect such changes for the fifteen months ending the preceding June 30, (3) on October 1, 1985, and October 1, 1986, to the nearest lower dollar increment to reflect such changes for the twelve months ending the preceding June 30, and (4) on October 1, 1987, and each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, for items other than food, for the twelve months ending the preceding June 30. All households with earned income shall be allowed an additional deduction of 20 per centum of all earned income (other than that excluded by subsection (d) of this section), to compensate for taxes, other mandatory deductions from salary, and work expenses, except that such additional deduction shall not be allowed with respect to earned income that a household willfully or fraudulently fails (as proven in a proceeding provided for in section 6(b)) to report in a timely manner. Households, other than those households containing an elderly or disabled member, shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, amounts made available and excluded for the expenses under subsection (d)(3),[1] and expenses that are paid under section 6(d)(4)(I) for dependent care, to (1) a dependent care deduction, the maximum allowable level of which shall be $160 a month for each dependent, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education which is preparatory for employment and (2) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed: *Provided*, That the amount of such excess shelter expense deduction shall not exceed $164 a month in the forty-eight contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States $285, $234, $199, and $121 a month, respectively, adjusted on October 1, 1988, and on each October 1 thereafter, to the nearest lower dollar increment to reflect changes in the shelter, fuel, and utilities components of housing costs in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, as appropriately adjusted by the Bureau of Labor Statistics after consultation with the Secretary, for the twelve months ending the preceding June 30. In computing the excess shelter expense deduction under clause (2) of the preceding sentence, a State agency may use a standard utility allowance in accordance with regulations promulgated by the Secretary, except that a State agency may use an allowance which does not fluctuate within a year to reflect seasonal variations. An allowance for a heating or cooling expense may not be used for a household that does not incur a heating or cooling expense, as the case may be, or does incur a heating or cooling expense but is located in a public housing unit which has central utility meters and charges households, with regard to such expense, only for excess utility costs. No such allowance may be used for a household that shares such expense with, and lives with, another individual not participating in the food stamp program, another household participating in the food stamp program, or both, unless the allowance is prorated between the household and the other individual, household, or both. If a State agency elects to use a standard utility allowance that reflects heating or cooling costs, it shall be made available to households receiving a payment, or on behalf of which a payment is made, under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) or other similar energy assistance program, provided that the household still incurs out-of-pocket heating or cooling expenses. A State agency may use a separate standard utility allowance for households on behalf of which such payment is made, but may not be required to do so. A State agency not electing to use a separate allowance, and making a single standard utility allowance available to households incurring heating or cooling expenses (other than households described in the sixth sentence of this subsection) may not be required to reduce such allowance due to the provision (direct or indirect) of assistance under the Low-Income Home Energy Assistance Act of 1981. For purposes of the food stamp program, assistance provided under the Low-Income Home Energy Assistance Act of 1981 shall be considered to be prorated over the entire heating or cooling season for which it was provided. A State agency shall allow a household to switch between any standard utility allowance and a deduction based on its actual utility costs at the end of any certification period and up to one additional time during each twelve-month period. Households containing an elderly or disabled member shall also be entitled, with respect to expenses other than expenses paid on behalf of the household by a third party, to—

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[1] P.L. 101-624, §1715(b), inserted ", amounts made available and excluded for the expenses under subsection (d)(3),".

(A) an excess medical expense deduction for that portion of the actual cost of allowable medical expenses, incurred by elderly or disabled members, exclusive of special diets, that exceed $35 a month;

(B) a dependent care deduction, the maximum allowable level of which shall be the same as that contained in clause (1) of the fourth sentence of this subsection, for the actual cost of payments necessary for the care of a dependent, regardless of the dependent's age, when such care enables a household member to accept or continue employment, or training or education that is preparatory for employment; and

(C) an excess shelter expense deduction to the extent that the monthly amount expended by a household for shelter exceeds an amount equal to 50 per centum of monthly household income after all other applicable deductions have been allowed.[2]

State agencies shall offer eligible households a method of claiming a deduction for recurring medical expenses that are initially verified under the excess medical expense deduction provided for in subparagraph (A), in lieu of submitting information or verification on actual expenses on a monthly basis. The method described in the preceding sentence shall be designed to minimize the administrative burden for eligible elderly and disabled household members choosing to deduct their recurrent medical expenses pursuant to such method, shall rely on reasonable estimates of the member's expected medical expenses for the certification period (including changes that can be reasonably anticipated based on available information about the member's medical condition, public or private medical insurance coverage, and the current verified medical expenses incurred by the member), and shall not require further reporting or verification of a change in medical expenses if such a change has been anticipated for the certification period[3].

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[2] See P.L. 97-35, §2605(f) (this volume), for calculating the excess shelter expense deduction and/or standard utility allowance.

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VALUE OF ALLOTMENT

SEC. 8. [7 U.S.C. 2017]

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(b) The value of the allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws, including, but not limited to, laws relating to taxation, welfare, and public assistance programs, and no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of the receipt of an allotment under this Act.

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ADMINISTRATION

SEC. 11. [7 U.S.C. 2020]

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(e) The State plan of operation required under subsection (d) of this section shall provide, among such other provisions as may be required by regulation—

(1) that the State agency shall (A) at the option of the State agency, inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the food stamp program; and (B) use appropriate bilingual personnel and printed material in the administration of the program in those portions of political subdivisions in the State in which a substantial number of members of low-income households speak a language other than English;

(2) that each household which contacts a food stamp office in person during office hours to make what may reasonably be interpreted as an oral or written request for food stamp assistance shall receive and shall be permitted to file, on the same day that such contact is first made, a simplified, uniform national application form for participation in the food stamp program designed by the Secretary, unless the Secretary approves a deviation from that form by a particular State agency because of the use by that agency of a dual public assistance food stamp application form pursuant to subsection (i) of this section, the requirements of an agency's computer system, or other exigencies as determined by the Secretary, and in approving such deviation, the Secretary takes into account whether such State forms are easy to use, brief and readable. In consultation with the Secretary of Health and Human Services, the Secretary shall develop a program to provide assistance to States that request assistance in the development of brief, simply-written and readable application forms including application forms that cover the food stamp program, the aid to families with dependent children program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and medical assistance programs administered by the Secretary of Health and Human Services under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Each food stamp application form shall contain, in plain and prominent language on its front cover, a place where applicants can write their names, addresses, and signatures, and (on or near its front cover) explanations[4] in understandable terms informing households of their right to file the application without immediately completing additional sections, describing the expedited processing requirements of section 11(e)(9) and informing households that benefits are provided only from the date of application. Each application form shall contain a description in understandable terms in prominent and boldface lettering of the appropriate civil and criminal provisions dealing with violations of this Act, including the penalties therefor, by members of an eligible household. Each application shall also contain in understandable terms and in prominent and boldface lettering a statement that the information provided by the applicant in connection with the application for a coupon allotment will be subject to verification by Federal, State, and local officials to determine if such information

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[3] P.L. 101-624, §1717, inserted ", shall rely on reasonable estimates of the member's expected medical expenses for the certification period (including changes that can be reasonably anticipated based on available information about the member's medical condition, public or private medical insurance coverage, and the current verified medical expenses incurred by the member), and shall not require further reporting or verification of a change in medical expenses if such a change has been anticipated for the certification period".

[4] P.L. 101-624, §1736(1), struck out "instructions" and substituted "(on or near its front cover) explanations".

is factual and that if any material part of such information is incorrect, food stamps may be denied to the applicant, and that the applicant may be subjected to criminal prosecution for knowingly providing incorrect information. The State agency shall waive in-office interviews, on a household's request, if a household is unable to appoint an authorized representative pursuant to paragraph (7) and has no adult household members able to come to the appropriate State agency office because such members are elderly, are mentally or physically handicapped, live in a location not served by a certification office, or have transportation difficulties or similar hardships as determined by the State agency (including hardships due to residing in a rural area, illness, care of a household member, prolonged severe weather, or work or training hours). If an in-office interview is waived, the State agency may conduct a telephone interview or a home visit. The State agency shall provide for telephone contact by, mail delivery of forms to, and mail return of forms by, households that have transportation difficulties or similar hardships. The State agency shall require that an adult representative of each household that is applying for food stamp benefits shall certify in writing, under penalty of perjury, that the information contained in the application is true and that all members of the household are either citizens or are aliens eligible to receive food stamps under section 6(f).[5] The signature of the adult under this section shall be deemed sufficient to comply with any provision of Federal law requiring household members to sign the application or statements in connection with the application process.[6] The State agency shall provide a method of certifying and issuing coupons to eligible households that do not reside in permanent dwellings or who do not have fixed mailing addresses. In carrying out the preceding sentence, the State agency shall take such steps as are necessary to ensure that participation in the food stamp program is limited to eligible households.

(3) that the State agency shall thereafter promptly determine the eligibility of each applicant household by way of verification of income other than that determined to be excluded by section 5(d) of this Act (in part through the use of the information, if any, obtained under section 16(e) of this Act), household size (in any case such size is questionable), and such other eligibility factors as the Secretary determines to be necessary to implement sections 5 and 6 of this Act, although the State agency may verify prior to certification, whether questionable or not, the size of any applicant household and such other eligibility factors as the State agency determines are necessary, so as to complete certification of and provide an allotment retroactive to the period of application to any eligible household not later than thirty days following its filing of an application, and that the State agency shall—

(A) provide each applicant household, at the time of application, a clear written statement explaining what acts the household must perform to cooperate in obtaining verification and otherwise completing the application process;

(B) assist each applicant household in obtaining appropriate verification and completing the application process;

(C) not require any household to submit additional proof of a matter on which the State agency already has current verification as determined under regulations issued by the Secretary, unless the State agency has reason to believe that the information possessed by the agency is inaccurate, incomplete, or inconsistent;

(D) subject to subparagraph (E), not deny any application for participation under this program solely because of the failure of a person outside the household to cooperate (other than an individual failing to cooperate who would otherwise be a household member but for the operation of any of the individual disqualification provisions of subsections (b), (d), (e), (f), and (g) of section 6; and

(E) process applications if a household complies with the requirements of the first sentence of section 6(c), by taking appropriate steps to verify information otherwise required to be verified under this Act, and that the State agency shall provide the household, at the time of each certification and recertification, with a statement describing the reporting responsibilities of the household under this Act, and provide a toll-free or local telephone number, or a telephone number at which collect calls will be accepted by the State agency, at which the household may reach an appropriate representative of the State agency.[7] Under rules prescribed by the Secretary, a State agency shall develop standard estimates of the shelter expenses that may reasonably be expected to be incurred by households in which all members are homeless but that are not receiving free shelter throughout the month.[8] The Secretary may issue regulations to preclude the use of the estimates for households with extremely low shelter costs for whom the following sentence shall be apply.[9] A State agency shall use the estimates in determining the allotments of the households, unless a household verifies higher expenses[10];

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[5] P.L. 101-624, §1736(2), added this sentence.
[6] P.L. 101-624, §1736(2), added this sentence.
[7] P.L. 101-624, §1737, inserted a period.

(4) that the State agency shall insure that each participating household receive a notice of expiration of its certification prior to the start of the last month of its certification period advising the household that it must submit a new application in order to renew its eligibility for a new certification period and, further, that each such household which seeks to be certified another time or more times thereafter by filing an application for such recertification no later than fifteen days prior to the day upon which its existing certification period expires shall, if found to be still eligible, receive its allotment no later than one month after the receipt of the last allotment issued to it pursuant to its prior certification, but if such household is found to be ineligible or to be eligible for a smaller allotment during the new certification period it shall not continue to participate and receive benefits on the basis authorized for the preceding certification period even if it makes a timely request for a fair hearing pursuant to paragraph (10) of this subsection: *Provided*, That the timeliness standards for submitting the notice of expiration and filing an application for recertification may be modified by the Secretary in light of sections 5(f)(2) and 6(c) of this Act if administratively necessary;

(5) the specific standards to be used in determining the eligibility of applicant households which shall be in accordance with sections 5 and 6 of this Act and shall include no additional requirements imposed by the State agency;

(6) that (A) the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this Act; (B) the State agency personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration or any standards later prescribed by the United States Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 modifying or superseding such standards relating to the establishment and maintenance of personnel standards on a merit basis; (C) the State agency shall provide a continuing, comprehensive program of training for all personnel undertaking such certification so that eligible households are promptly and accurately certified to receive the allotments for which they are eligible under this Act; (D) the State agency, at its option, may undertake intensive training to ensure that State agency personnel who undertake the certification of households that include a member who engages in farming are qualified to perform such certification; and (E) at its option, the State agency may provide, or contract for the provision of, training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps;

(7) that an applicant household may be represented in the certification process and that an eligible household may be represented in coupon issuance or food purchase by a person other than a member of the household so long as that person has been clearly designated as the representative of that household for that purpose by the head of the household or the spouse of the head, and, where the certification process is concerned, the representative is an adult who is sufficiently aware of relevant household circumstances, except that the Secretary may restrict the number of households which may be represented by an individual and otherwise establish criteria and verification standards for representation under this paragraph;

(8) safeguards which limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the provisions of this Act, regulations issued pursuant to this Act, Federal assistance programs, or federally assisted State programs, except that (A) such safeguards shall not prevent the use or disclosure of such information to the Comptroller General of the United States for audit and examination authorized by any other provision of law, and (B) notwithstanding any other provision of law, all information obtained under this Act from an applicant household shall be made

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[8] P.L. 101-624, §1737, added this sentence.
[9] P.L. 101-624, §1737, added this sentence.
[10] P.L. 101-624, §1737, added this sentence.

available, upon request, to local, State or Federal law enforcement officials for the purpose of investigating an alleged violation of this Act or any regulation issued under this Act;

(9) that the State agency shall—

(A) provide coupons no later than five days after the date of application to any household which—

(i)(I) has gross income that is less than $150 per month; or

(II) is a destitute migrant or a seasonal farmworker household in accordance with the regulations governing such households in effect July 1, 1982; and

(ii) has liquid resources that do not exceed $100;

(B) provide coupons no later than five days after the date of application to any household in which all members are homeless individuals and that meets the income and resource criteria for coupons under this Act;

(C) provide coupons no later than five days after the date of application to any household that has a combined gross income and liquid resources that is less than the monthly rent, or mortgage, and utilities of the household; and

(D) to the extent practicable, verify the income and liquid resources of a household referred to in subparagraph (A), (B), or (C) prior to issuance of coupons to the household;

(10) for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under any provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance: *Provided*, That any household which timely requests such a fair hearing after receiving individual notice of agency action reducing or terminating its benefis within the household's certification period shall continue to participate and receive benefits on the basis authorized immediately prior to the notice of adverse action until such time as the fair hearing is completed and an adverse decision rendered or until such time as the household's certification period terminates, whichever occurs earlier, except that in any case in which the State agency receives from the household a written statement containing information that clearly requires a reduction or termination of the household's benefits, the State agency may act immediately to reduce or terminate the household's benefits and may provide notice of its action to the household as late as the date on which the action becomes effective;

(11) upon receipt of a request from a household, for the prompt restoration in the form of coupons to a household of any allotment or portion thereof which has been wrongfully denied or terminated, except that allotments shall not be restored for any period of time more than one year prior to the date the State agency receives a request for such restoration from a household or the State agency is notified or otherwise discovers that a loss to a household has occurred;

(12) for the submission of such reports and other information as from time to time may be required by the Secretary;

(13) for indicators of expected performance in the administration of the program;

(14) that the State agency shall prominently display in all food stamp and public assistance offices posters prepared or obtained by the Secretary describing the information contained in subparagraphs (A) through (D) of this paragraph and shall make available in such offices for home use pamphlets prepared or obtained by the Secretary listing (A) foods that contain substantial amounts of recommended daily allowances of vitamins, minerals, and protein for children and adults; (B) menus that combine such foods into meals; (C) details on eligibility for other programs administered by the Secretary that provide nutrition benefits; and (D) general information on the relationship between health and diet;

(15) that the State agency shall specify a plan of operation for providing food stamps for households that are victims of a disaster; that such plan shall include, but not be limited to, procedures for informing the public about the disaster program and how to apply for its benefits, coordination with Federal and private disaster relief agencies and local government officials, application procedures to reduce hardship and inconvenience and deter fraud, and instruction of caseworkers in procedures for implementing and operating the disaster program.[11]

(16) that the State agency shall require each household certified as eligible to participate by methods other than the out-of-office methods specified in the fourth sentence of paragraph (2) of this subsection in those project areas or parts of project areas in which the Secretary, in consultation with the Department's

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[11] As in original. Period should possibly be a semicolon.

Inspector General, finds that it would be useful to protect the program's integrity and would be cost effective, to present a photographic identification card when using its authorization card in order to receive its coupons. The State agency may permit a member of a household to comply with this paragraph by presenting a photographic identification card used to receive assistance under a welfare or public assistance program;

(17) notwithstanding paragraph (8) of this subsection, for the immediate reporting to the Immigration and Naturalization Service by the State agency of a determination by personnel responsible for the certification or recertification of households that any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act;

(18) at the option of the State agency, for the establishment and operation of an automatic data processing and information retrieval system that meets such conditions as the Secretary may prescribe and that is designed to provide efficient and effective administration of the food stamp program;

(19) that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1137 of the Social Security Act and that any additional information available from agencies administering State unemployment compensation laws under the provisions of section 303(d) of the Social Security Act shall be requested and utilized by the State agency (described in section 3(n)(1) of this Act) to the extent permitted under the provisions of section 303(d) of the Social Security Act;

(20) that, in project areas or parts thereof where authorization cards are used, and eligible households are required to present photographic identification cards in order to receive their coupons, the State agency shall include, in any agreement or contract with a coupon issuer, a provision that (A) the issuer shall (i) require the presenter to furnish a photographic identification card at the time the authorization card is presented, and (ii) record on the authorization card the identification number shown on the photographic identification card; and (B) if the State agency determines that the authorization card has been stolen or otherwise was not received by a household certified as eligible, the issuer shall be liable to the State agency for the face value of any coupons issued in the transaction in which such card is used and the issuer fails to comply with the requirements of clause (A) of this paragraph;

(21) that the State agency shall establish a system and take action on a periodic basis to verify and otherwise assure that an individual does not receive coupons in more than one jurisdiction within the State;[12]

(22) the plans of the State agency for carrying out employment and training programs under section 6(d)(4), including the nature and extent of such programs, the geographic areas and households to be covered under such program, and the basis, including any cost information, for exemptions of categories and individuals and for the choice of employment and training program components reflected in the plans;[13]

(23) in a project area in which 5,000 or more households participate in the food stamp program, for the establishment and operation of a unit for the detection of fraud in the food stamp program, including the investigation, and assistance in the prosecution, of such fraud;[14]

(24) at the option of the State, for procedures necessary to obtain payment of uncollected overissuance of coupons from unemployment compensation pursuant to section 13(c); and[15]

(25) a procedure for designating project areas or parts of project areas that are rural and in which low-income persons face substantial difficulties in obtaining transportation. The State agency shall designate the areas according to procedures approved by the Secretary. In each area so designated, the State agency shall provide for the issuance of coupons by mail to all eligible households in the area, except that any household with mail losses exceeding levels established by the Secretary shall not be entitled to such a mailing and the State agency shall not be required to issue coupons by mail in those localities within such area where the mail loss rates exceed standards set by the Secretary.[16]

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[12] P.L. 101-624, §1738(1), struck out "and".
[13] P.L. 101-624, §1738(2), struck out the period and substituted a semicolon.
[14] P.L. 101-624, §1738(3), struck out "and".
[15] P.L. 101-624, §1738(4), struck out the period and substituted "; and".
[16] P.L. 101-624, §1738(5), added paragraph (25).

(i) Notwithstanding any other provision of law, the Secretary and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program under part A of title IV of the Social Security Act; (2) households in which all members are applicants for or recipients of supplemental security income shall be informed of the availability of benefits under the food stamp program and be assisted in making a simple application to participate in such program at the social security office and be certified for eligibility utilizing information contained in files of the Social Security Administration; (3) households in which all members are included in a federally aided public assistance or State or local general assistance grant in a State that has a single State-wide general assistance application form[17] shall have their application for participation in the food stamp program contained in the public assistance or general assistance application form, and households applying for a local general assistance grant in a local jurisdiction in which the agency administering the general assistance program also administers the food stamp program shall be provided an application for participation in the food stamp program at the time of their application for general assistance, along with information concerning how to apply for the food stamp program[18]; and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance or general assistance, shall be certified for participation in the food stamp program based on information in the public assistance or general assistance case file to the extent that reasonably verified information is available in such case file. In addition to implementing paragraphs (1) through (4), the State agency shall inform applicants for benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) that such applicants may file, along with their application for such benefits, an application for benefits under this Act, and that if such applicants file, they shall have a single interview for food stamps and for benefits under part A of title IV of the Social Security Act. No household shall have its application to participate in the food stamp program denied nor its benefits under the food stamp program terminated solely on the basis that its application to participate has been denied or its benefits have been terminated under any of the programs carried out under the statutes specified in the second sentence of section 5(a) and without a separate determination by the State agency that the household fails to satisfy the eligibility requirements for participation in the food stamp program.

(j)(1) Any individual who is an applicant for or recipient of supplemental security income or[19] social security benefits (under regulations prescribed by the Secretary in conjunction with the Secretary of Health and Human Services) shall be informed of the availability of benefits under the food stamp program and informed of the availability of a simple application to participate in such program at the social security office.

(2) The Secretary and the Secretary of Health and Human Services shall revise the memorandum of understanding in effect on the date of enactment of the Food Security Act of 1985, regarding services to be provided in social security offices under this subsection and subsection (i), in a manner to ensure that—

(A) applicants for and recipients of social security benefits are adequately notified in social security offices that assistance may be available to them under this Act;

(B) applications for assistance under this Act from households in which all members are applicants for or recipients of supplemental security income will be forwarded immediately to the State agency in an efficient and timely manner; and

(C) the Secretary of Health and Human Services receives from the Secretary reimbursement for costs incurred to provide such services.

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COLLECTION AND DISPOSITION OF CLAIMS

Sec. 13. [7 U.S.C. 2022]

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(c)(1) As used in this subsection, the term "uncollected overissuance" means the amount of an overissuance of coupons, as determined under subsection (b)(1), that has not been recovered pursuant to subsection (b)(1).

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[17] P.L. 101-624, §1740(1), inserted "in a State that has a single State-wide general assistance application form".

[18] P.L. 101-624, §1740(2), inserted ", and households applying for a local general assistance grant in a local jurisdiction in which the agency administering the general assistance program also administers the food stamp program shall be provided an application for participation in the food stamp program at the time of their application for general assistance, along with information concerning how to apply for the food stamp program".

[19] P.L. 101-624, §1741, inserted "supplemental security income or".

(2) A State agency may determine on a periodic basis, from information supplied pursuant to section 3(b) of the Wagner-Peyser Act (29 U.S.C. 49b(b)), whether an individual receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law) owes an uncollected overissuance.

(3) A State agency may recover an uncollected overissuance—

(A) by—

(i) entering into an agreement with an individual described in paragraph (2) under which specified amounts will be withheld from unemployment compensation otherwise payable to the individual; and

(ii) furnishing a copy of the agreement to the State agency administering the unemployment compensation law; or

(B) in the absence of an agreement, by obtaining a writ, order, summons, or other similar process in the nature of garnishment from a court of competent jurisdiction to require the withholding of amounts from the unemployment compensation.

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ADMINISTRATIVE COST-SHARING AND QUALITY CONTROL

SEC. 16. [7 U.S.C. 2025]

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(e) The Secretary and State agencies shall (1) require, as a condition of eligibility for participation in the food stamp program, that each household member furnish to the State agency their social security account number (or numbers, if they have more than one number), and (2) use such account numbers in the administration of the food stamp program. The Secretary and State agencies shall have access to the information regarding individual food stamp program applicants and participants who receive benefits under title XVI of the Social Security Act that has been provided to the Secretary of Health and Human Services, but only to the extent that the Secretary and the Secretary of Health and Human Services determine necessary for purposes of determining or auditing a household's eligibility to receive assistance or the amount thereof under the food stamp program, or verifying information related thereto.

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[*Internal References.*—S.S. Act §§303(d), 402(a), 410(a) and (c), and 1137(b) cite the Food Stamp Act of 1977 and S.S. Act §§202(f), (g), (h), 232, title IV, part A, 410, 1106, title XVI (SSI), 1612(b), 1613(a), and 1631(e) catchlines and §§2(a), 202(e), 205(c), 303(d), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 88-525.]

P.L. 88-643, Approved October 13, 1964 (78 Stat. 1043)

Central Intelligence Agency Retirement Act of 1964 for Certain Employees

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SEC. 111. [50 U.S.C. 403 note] When used in this Act, the term—

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(2) "Director" means the Director of Central Intelligence;

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TRANSITION PROVISIONS

SEC. 307. [50 U.S.C. 403 note] (a) The Director shall issue regulations providing for the transition from the Central Intelligence Agency Retirement and Disability System to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, in a manner consistent with sections 301 through 304 of the Federal Employees' Retirement System Act of 1986.

(b) The Director shall submit the regulations prescribed under subsection (a) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

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[*Internal Reference.*—S.S. Act §210(a) cites the Central Intelligence Agency Retirement Act of 1964.]

P.L. 89-73, Approved July 14, 1965 (79 Stat. 218)
Older Americans Act of 1965

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FEDERAL AGENCY CONSULTATION

SEC. 203. [42 U.S.C. 3013] (a) The Commissioner[1], in carrying out the purposes and provisions of this Act, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this Act, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this Act shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purposes of this Act, particularly administering any program set forth in subsection (b), shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.

(b) For the purposes of subsection (a), programs related to the purposes of this Act shall include—

(1) the Job Training Partnership Act,
(2) title II of the Domestic Volunteer Service Act of 1973,
(3) titles XVI, XVIII, XIX, and XX of the Social Security Act,
(4) sections 231 and 232 of the National Housing Act,
(5) the United States Housing Act of 1937,
(6) section 202 of the Housing Act of 1959,
(7) title I of the Housing and Community Development Act of 1974,
(8) title I of Higher Education Act of 1965 and the Adult Education Act,
(9) sections 3, 9, and 16 of the Urban Mass Transportation Act of 1964,
(10) the Public Health Service Act, including block grants under title XIX of such Act,
(11) the Low-Income Home Energy Assistance Act of 1981,
(12) part A of the Energy Conservation in Existing Buildings Act of 1976, relating to weatherization assistance for low income persons,
(13) the Community Services Block Grant Act,
(14) demographic statistics and analysis programs conducted by the Bureau of the Census under title 13, United States Code,
(15) parts II and III of title 38, United States Code,
(16) the Rehabilitation Act of 1973, and
(17) the Developmental Disabilities and Bill of Rights Act.

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SEC. 210. [42 U.S.C. 3020a]

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(b) No part of the costs of any project under any title of this Act may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

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SURPLUS PROPERTY ELIGIBILITY

SEC. 213. [42 U.S.C. 3020d] Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this Act, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act, shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

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[1] Commissioner on Aging, Department of Health and Human Services.

SEC. 306. [42 U.S.C. 3026]

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(c)(1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 305(a)(2)(A) or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

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STATE PLANS

SEC. 307. [42 U.S.C. 3027] (a) Except as provided in section 309(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Commissioner a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall comply with all of the following requirements:

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(12) The plan shall provide the following assurances, with respect to a long-term care ombudsman program:

(A) The State agency will establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization, other than an agency or organization which is responsible for licensing or certifying long-term care services in the State or which is an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), an Office of the State Long-Term Care Ombudsman (in this paragraph referred to as the "Office") and shall carry out through the Office a long-term care ombudsman program which provides an individual who will, on a full-time basis—

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to action, inaction, or decisions of providers, or their representatives, of long-term care services, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, or rights of such residents;

(ii) provide for training staff and volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(iii) carry out such other activities as the Commissioner deems appropriate.

(B) The State agency will establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or upon court order.

(C) The State agency will establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis.

(D) The State agency will establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or the individual's legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order.

(E) In planning and operating the ombudsman program, the State agency will consider the views of area agencies on aging, older individuals, and provider agencies.

(F) The State agency will—

(i) ensure that no individual involved in the designation of the long-term care ombudsman (whether by appointment or otherwise) or the designation of the head of any subdivision of the Office is subject to a conflict of interest;

(ii) ensure that no officer, employee, or other representative of the Office is subject to a conflict of interest; and

(iii) ensure that mechanisms are in place to identify and remedy any such or other similar conflicts.

(G) The State agency will—

(i) ensure that adequate legal counsel is available to the Office for advice and consultation and that legal representation is provided to any representative of the Office against whom suit or other legal action is brought in connection with the performance of such representative's official duties; and

(ii) ensure that the Office has the ability to pursue administrative, legal, and other appropriate remedies on behalf of residents of long-term care facilities.

(H) The State agency will require the Office to—

(i) prepare an annual report containing data and findings regarding the types of problems experienced and complaints received by or on behalf of individuals residing in long-term care facilities, and to provide policy, regulatory, and legislative recommendations to solve such problems, resolve such complaints, and improve the quality of care and life in long-term care facilities;

(ii) analyze and monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities and services in that State, and recommend any changes in such laws, regulations, and policies deemed by the Office to be appropriate;

(iii) provide information to public agencies, legislators, and others, as deemed necessary by the Office, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities;

(iv) provide for the training of the Office staff, including volunteers and other representatives of the Office, in—

(I) Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in the State;

(II) investigative techniques; and

(III) such other matters as the State deems appropriate;

(v) coordinate ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illness established under part A of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001 et seq.) and under the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (Public Law 99-319); and

(vi) include any area or local ombudsman entity designated by the State Long-Term Care Ombudsman as a subdivision of the Office. Any representative of an entity designated in accordance with the preceding sentence (whether an employee or an unpaid volunteer) shall be treated as a representative of the Office for purposes of this paragraph.

(I) The State will ensure that no representative of the Office will be liable under State law for the good faith performance of official duties.

(J) The State will—

(i) ensure that willful interference with representatives of the Office in the performance of their official duties (as defined by the Commissioner) shall be unlawful;

(ii) prohibit retaliation and reprisals by a long-term care facility or other entity with respect to any resident or employee for having filed a complaint with, or providing information to, the Office;

(iii) provide for appropriate sanctions with respect to such interference, retaliation, and reprisals; and

(iv) ensure that representatives of the Office shall have—

(I) access to long-term care facilities and their residents; and

(II) with the permission of a resident or resident's legal guardian, have access to review the resident's medical and social records or, if a resident is unable to consent to such review and has no legal guardian, appropriate access to the resident's medical and social records.

(K) The State agency will prohibit any officer, employee, or other representative of the Office to investigate any complaint filed with the Office unless the individual has received such training as may be required under subparagraph (G)(iv) and has been approved by the long-term care ombudsman as qualified to investigate such complaints.

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DEMONSTRATION PROJECTS

SEC. 422. [42 U.S.C. 3035a]

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(c) The Commissioner shall consult with the Commissioner of the Rehabilitation Services Administration, the Commissioner of the Social Security Administration, and the Surgeon General of the Public Health Service, to develop procedures for—

(1) identifying elderly, blind, and disabled individuals who need supportive services;

(2) compiling a list in each community of all services available to the elderly, blind, and disabled; and

(3) establishing an information and referral service within the appropriate community agency to—

(A) inform those in need of the availability of such services; and

(B) coordinate the delivery of such services to the elderly, blind, and disabled.

The Commissioner shall establish procedures for administering demonstration projects under subsection (b)(6) not later than 6 months after the effective date of this subsection. The Commissioner shall report to the Congress with respect to the results and findings of the demonstration projects conducted under this section at the completion of the projects.

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[*Internal References.*—S.S. Act §§1819(c) and (g) and 1919(c) and (g) cite the Older Americans Act of 1965 and S.S. Act titles IV, XVIII, and XIX, and §1612(b) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 89-73.]

P.L. 89-97, Approved July 30, 1965 (79 Stat. 286)
Social Security Amendments of 1965

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TRANSITIONAL PROVISION ON ELIGIBILITY OF PRESENTLY UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

SEC. 103. [42 U.S.C. 426a] (a) Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in title II of the Social Security Act or section 5(l) of the Railroad Retirement Act of 1937), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 202 of the Social Security Act would not be, entitled to hospital insurance benefits under section 226 of such Act, and is not certifiable as a qualified railroad retirement beneficiary under section 21 of the Railroad Retirement Act of 1937 (as added by section 105(a) of this Act),

(4) is a resident of the United States (as defined in section 210(i) of the Social Security Act), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so

defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 226 of the Social Security Act, to be entitled to monthly insurance benefits under such section 202 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 202 of such Act would become) entitled to hospital insurance benefits under section 226 or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) The provisions of subsection (a) shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 210(a)(17) of the Social Security Act,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 202(u) of the Social Security Act, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5, United States Code,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of title XVIII of such Act with respect to individuals who are entitled to hospital insurance benefits under section 226 of such Act solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

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SEC. 121. * * *

(b) [42 U.S.C. 1396b note] No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act, or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972, Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act, if such care is (or could be) provided under a State plan approved under title XIX of such Act by an institution certified under such title XIX.

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[*Internal References.*—S.S. Act §§226(h), 1818(c), and 1869(b) cite the Social Security Amendments of 1965 and S.S. Act titles I, IV, X, XIV, and XVI (State) and §1817 catchlines have footnotes referring to P.L. 89-97.]

P.L. 89-117, Approved August 10, 1965 (79 Stat. 451)

Housing and Urban Development Act of 1965[1]

* * * * * * *

SEC. 101. [12 U.S.C. 1701s] (a) The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to make, and contract to make, annual payments to a "housing owner" on behalf of "qualified tenants", as those terms are defined herein, in such amounts and under such circumstances as are prescribed in or pursuant to this section. In no case shall a contract provide for such payments with respect to any housing for a period exceeding forty years. The aggregate amount of the contracts to make such payments shall not exceed amounts approved in appropriation Acts, and payments pursuant to such contract shall not exceed $150,000,000 per annum prior to July 1, 1969, which maximum dollar amount shall be increased by $40,000,000, on July 1, 1969, by $100,000,000 on July 1, 1970, and by $40,000,000 on July 1, 1971.

(b) As used in this section, the term "housing owner" means a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a mortgagor under section 221(d)(3) of the National Housing Act and which, after the enactment of this section[2], has been approved for mortgage insurance thereunder and has been approved for receiving the benefits of this section: *Provided,* That, except as provided in subsection (j), no payments under this section may be made with respect to any property financed with a mortgage receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of that Act. Such term also includes a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is the owner of a rental or cooperative housing project financed under a State or local program providing assistance through loans, loan insurance, or tax abatement and which may involve either new or existing construction and which is approved for receiving the benefits of this section. Subject to the limitations provided in subsection (j), the term "housing owner" also has the meaning prescribed in such subsection. Nothing in this section shall be construed as preventing payments to a housing owner with respect to projects in which all or part of the dwelling units do not contain kitchen facilities; but of the total amount of contracts to make annual payments approved in appropriation Acts pursuant to subsection (a) after the date of the enactment of the Housing and Urban Development Act of 1970[3], not more than 10 per centum in the aggregate shall be made with respect to such projects.

(c) As used in this section, the term—

(1) "qualified tenant" means any individual or family having an income which would qualify such individual or family for assistance under section 8 of the United States Housing Act of 1937, except that such term shall also include any individual or family who was receiving assistance under this section on the day preceding the date of the enactment of the Housing and Community Development Amendments of 1979, so long as such individual or family continues to meet the conditions for such assistance which were in effect on such day; and

(2) "income" means income from all sources of each member of the household, as determined in accordance with criteria prescribed by the Secretary. In determining amounts to be excluded from income, the Secretary may, in the Secretary's discretion, take into account the number of minor children in the household and such other factors as the Secretary may determine are appropriate.

The terms "qualified tenant" and "tenant" include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of his membership to the cooperative, will not be reimbursed for any equity increment accumulated through payments under this section. With respect to members of a cooperative, the terms "rental" and "rental charges" mean the charges under the occupancy agreements between such members and the cooperative.

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[1] See P.L. 94-375, §2(h), with respect to exclusion of assistance under P.L. 89-117, §101, from income and resources for purposes of title XVI of the Social Security Act, in Vol. II, p. .

[2] August 10, 1965 (P.L. 89-117, 79 Stat. 451).

[3] December 31, 1970 (P.L. 91-609, 84 Stat. 1770).

(d) The amount of the annual payment with respect to any dwelling unit shall be the lesser of (1) 70 per centum of the fair market rent, or (2) the amount by which the fair market rental for such unit exceeds 30 per centum of the tenant's adjusted income.

(e) (1) For purposes of carrying out the provisions of this section, the Secretary shall establish criteria and procedures for determining the eligibility of occupants and rental charges, including criteria and procedures with respect to periodic review of tenant incomes and periodic adjustment of rental charges.

(2) Procedures adopted by the Secretary hereunder shall provide for recertifications of the incomes of occupants no less frequently than annually for the purpose of adjusting rental charges and annual payments on the basis of occupants' incomes, but in no event shall rental charges adjusted under this section for any dwelling exceed the fair market rental of the dwelling.

(3) The Secretary may enter into agreements, or authorize housing owners to enter into agreements, with public or private agencies for services required in the selection of qualified tenants, including those who may be approved, on the basis of the probability of future increases in their incomes, as lessees under an option to purchase (which will give such approved qualified tenants an exclusive right to purchase at a price established or determined as provided in the option) dwellings, and in the establishment of rentals. The Secretary is authorized (without limiting his authority under any other provision of law) to delegate to any such public or private agency his authority to issue certificates pursuant to this subsection.

(4) No payments under this section may be made with respect to any property for which the costs of operation (including wages and salaries) are determined by the Secretary to be greater than similar costs of operation of similar housing in the community where the property is situated.

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[*Internal References.*—S.S. Act §1612(b) cites the Housing and Urban Development Act of 1965 and S.S. Act §§1612(b) and 1613(a) catchlines have footnotes referring to P.L. 89-117.]

P.L. 89-329, Approved November 8, 1965 (79 Stat. 1219)
Higher Education Act of 1965

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STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS

SEC. 479B. [20 U.S.C. 1087uu] (a) ATTENDANCE COSTS NOT TREATED AS INCOME OR RESOURCES.—The portion of any student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) ATTENDANCE COSTS.—The attendance costs described in this subsection are—

(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and

(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

* * * * * * *

DEFINITIONS

SEC. 481. [20 U.S.C. 1088] (a) INSTITUTION OF HIGHER EDUCATION.—(1) Subject to subsection (e), for[1] the purpose of this title, except subpart 6 of part A and part B, the term "institution of higher education" includes, in addition to the institutions covered by the definition contained in section 1201(a)—

(A) a proprietary institution of higher education;

(B) a postsecondary vocational institution;

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[1] P.L. 101-239, §2007(b), struck out "For" and substituted "Subject to subsection (e), for".

(C) a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing; and

(D) a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively an accredited 2-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree.

(2) The term "accredited" when applied to any program of nurse education means a program accredited by a recognized body or bodies approved for such purpose by the Secretary.

(3) Whenever the Secretary determines eligibility under paragraph (1), the Secretary shall not recognize the accreditation of any eligible institution of higher education under this subsection if the institution of higher education is in the process of receiving a new accreditation or changing accrediting agency or association unless the eligible institution submits to the Secretary all materials relating to the prior accreditation, including materials demonstrating reasonable cause for changing the accrediting agency or association.[3]

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[*Internal References*.—S.S. Act §402(a) cites the Higher Education Act of 1965 and §§1612(b) and 1613(a) catchlines and S.S. Act §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 89-329.]

P.L. 89-642, Approved October 11, 1966 (80 Stat. 885)

Child Nutrition Act of 1966

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SEC. 11.

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(b) [42 U.S.C. 1780] The value of assistance to children under this Act shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs. Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this Act.

* * * * * * *

SPECIAL SUPPLEMENTAL FOOD PROGRAM

SEC. 17. [42 U.S.C. 1786] (a) Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition or health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems, including drug abuse, and improve the health status of these persons.

(b) As used in this section—

(1) "Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

(2) "Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

(3) "Competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

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[3] P.L. 101-239, §2007(c), added paragraph (3).

(4) "Costs for nutrition services and administration" means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(5) "Infants" means persons under one year of age.

(6) "Local agency" means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health and Human Services, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) "Nutrition education" means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(8) "Nutritional risk" means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, or (D) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, alcoholism and drug addiction.

(9) "Plan of operation and administration" means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) "Postpartum women" means women up to six months after termination of pregnancy.

(11) "Pregnant women" means women determined to have one or more fetuses in utero.

(12) "Secretary" means the Secretary of Agriculture.

(13) "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health and Human Services.

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(15) "Homeless individual" means—

(A) an individual who lacks a fixed and regular nighttime residence; or

(B) an individual whose primary nighttime residence is—

(i) a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations;

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized;

(iii) a temporary accommodation in the residence of another individual; or

(iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(16) "Drug abuse education" means—

(A) the provision of information concerning the dangers of drug abuse;

(B) the referral of participants who are suspected drug abusers to drug abuse clinics, treatment programs, counselors, or other drug abuse professionals; and

(C) the provision of materials developed by the Secretary under subsection (n).

(17) "Competitive bidding" means a procurement process under which the State agency selects the single source offering the lowest price, as determined by the submission of sealed bids, for the product for which bids are sought.[1]

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[1] P.L. 101-147, §123(a)(1), added paragraph (17).

(c)(1) The Secretary may carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to—

(A) the food stamp program;

(B) any program under which foods are distributed to needy families in lieu of food stamps; and

(C) receipt of food or meals from soup kitchens, or shelters, or other forms of emergency food assistance.

(2) Subject to amounts appropriated to carry out this section under subsection (g)—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 4 of the Agriculture and Consumer Protection Act of 1973[2] shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.

(d)(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2)(A) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of individuals for participation in the program. Any individual at nutritional risk shall be eligible for the program under this section only if such individual—

(i) is a member of a family with an income that is less than the maximum income limit prescribed under section 9(b) of the National School Lunch Act for free and reduced price meals;

(ii)(I) receives food stamps under the Food Stamp Act of 1977; or

(II) is a member of a family that receives assistance under the program for aid to families with dependent children established under part A of title IV of the Social Security Act; or

(iii)(I) receives medical assistance under title XIX of the Social Security Act; or

(II) is a member of a family in which a pregnant woman or an infant receives such assistance.

(B) For the purpose of determining income eligibility under this section, any State agency may choose to exclude from income any basic allowance for quarters received by military service personnel residing off military installations.[3]

(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(4) The Secretary shall report biennially to Congress on—

(A) the income and nutritional risk characteristics of participants in the program;

(B) participation in the program by members of families of migrant farmworkers; and

(C) such other matters relating to participation in the program as the Secretary considers appropriate.

(e)(1) The State agency shall ensure that nutrition education and drug abuse education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education and drug abuse education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program.[4]

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[2] P.L. 101-147, §326(b)(1), struck out "1304 of the Food and Agriculture Act of 1977" and substituted "4 of the Agriculture and Consumer Protection Act of 1973".

[3] P.L. 101-147, §123(a)(2), amended paragraph (2) in its entirety.

(2) The Secretary shall prescribe standards to ensure that adequate nutrition education services and breastfeeding promotion and support are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education and breastfeeding promotion and support shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education and breastfeeding promotion and support they have received.[5]

(3)[6] The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health and Human Services for comment, issue such materials for use in the program under this section.

(3) The State agency shall—

(A) ensure that written information concerning food stamps, the program for aid to families with dependent children under part A of title IV of the Social Security Act, and the child support enforcement program under part D of title IV of the Social Security Act is provided on at least 1 occasion to each adult participant in and each applicant for the program;

(B) provide each local agency with materials showing the maximum income limits, according to family size, applicable to pregnant women, infants, and children up to age 5 under the medical assistance program established under title XIX of the Social Security Act (in this section referred to as the "medicaid program"); and

(C) provide to individuals applying for the program under this section, or reapplying at the end of their certification period, written information about the medicaid program and referral to such program or to agencies authorized to determine presumptive eligibility for such program, if such individuals are not participating in such program and appear to have family income below the applicable maximum income limits for such program.[7]

(4) The State agency shall ensure that each local agency shall maintain and make available for distribution a list of local resources for substance abuse counseling and treatment.[8]

(5) Each local agency may use a master file to document and monitor the provision of nutrition education services (other than the initial provision of such services) to individuals that are required, under standards prescribed by the Secretary, to be included by the agency in group nutrition education classes.[9]

(f)(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

(C) The plan shall include—

(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

(ii) a description of the financial management system of the State agency;

(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, local programs for breastfeeding promotion,[10] prenatal care, well-child care, family planning, drug abuse education, alcohol and drug abuse counseling and treatment[11], child abuse counseling, and with the aid to families with dependent children, food stamp, maternal and child health care, and medicaid programs;

(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants, homeless individuals, and Indians;

(v) a plan to expend funds to carry out the program during the relevant fiscal year;

(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

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[4] P.L. 101-147, §125(a)(3)(A), struck out three sentences.

[5] P.L. 101-147, §125(a)(3)(C), added this paragraph (2).

[6] P.L. 101-147, §125(a)(3)(B), redesignated the former paragraph (2) as paragraph (3).

[7] P.L. 101-147, §125(a)(3)(D), added this second paragraph (3).

[8] P.L. 101-147, §125(a)(3)(D), added paragraph (4).

[9] P.L. 101-147, §213(a)(1), added paragraph (5).

[10] P.L. 101-147, §125(a)(4)(A)(i)(I), inserted "local programs for breastfeeding promotion,".

[11] P.L. 101-147, §123(a)(4)(A)(i)(II), inserted "and treatment".

(vii) a plan to provide program benefits under this section to eligible individuals most in need of the benefits and to provide eligible individuals not participating in the program with information on the program, the eligibility criteria for the program, and how to apply for the program, with emphasis on reaching and enrolling eligible women in the early months of pregnancy, including provisions to reach and enroll eligible migrants;[12]

(viii) a plan to provide program benefits under this section to unserved infants and children under the care of foster parents, protective services, or child welfare authorities, including infants exposed to drugs perinatally;[13]

(ix) if the State agency chooses to provide program benefits under this section to some or all eligible individuals who are incarcerated in prisons or juvenile detention facilities that do not receive Federal assistance under any program specifically established to assist pregnant women regarding their nutrition and health needs, a plan for the provision of such benefits to, and to meet the special nutrition education needs of, such individuals, which may include—

(I) providing supplemental foods to such individuals that are different from those provided to other participants in the program under this section;

(II) providing such foods to such individuals in a different manner than to other participants in the program under this section in order to meet the special needs of such individuals; and

(III) the development of nutrition education materials appropriate for the special needs of such individuals;[14]

(x) a plan to improve access to the program for participants and prospective applicants who are employed, or who reside in rural areas, by addressing their special needs through the adoption or revision of procedures and practices to minimize the time participants and applicants must spend away from work and the distances that participants and applicants must travel, including appointment scheduling, adjustment of clinic hours, clinic locations, or mailing of multiple vouchers;[15]

(xi) a plan to provide nutrition education and promote breastfeeding;[16]

(xii)[17] if the State agency chooses to request the funds conversion authority established in clause (h)(5) of this section, an estimate of the increased participation which will result from its cost-saving initiative, including an explanation of how the estimate was developed; and

(xiii)[18] such other information as the Secretary may require.

(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).

(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program. Each State agency shall be responsible for admininstering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6) The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed

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[12] P.L. 101-147, §123(a)(4)(A)(ii), amended clause (vii) in its entirety.

[13] P.L. 101-147, §123(a)(4)(A)(iv), added this clause (viii).

[14] P.L. 101-147, §123(a)(4)(A)(iv), added this clause (ix).

[15] P.L. 101-147, §123(a)(4)(A)(iv), added clause (x).

[16] P.L. 101-147, §123(a)(4)(A)(iv), added clause (xi).

[17] P.L. 101-147, §123(a)(4)(A)(iii), redesignated the former clause (viii) as clause (xii).

[18] P.L. 101-147, §123(a)(4)(A)(iii), redesignated the former clause (ix) as clause (xiii).

application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.

(7)(A)[19] Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions, must receive benefits more expeditiously.

(B) State agencies may provide for the delivery of vouchers to any participant who is not scheduled for nutrition education counseling or a recertification interview through means, such as mailing, that do not require the participant to travel to the local agency to obtain vouchers. The State agency shall describe any plans for issuance of vouchers by mail in its plan submitted under paragraph (1). The Secretary may disapprove a State plan with respect to the issuance of vouchers by mail in any specified jurisdiction or part of a jurisdiction within a State only if the Secretary finds that such issuance would pose a significant threat to the integrity of the program under this section in such jurisdiction or part of a jurisdiction.[20]

(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible individuals[21] (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, organizations and agencies serving homeless individuals and shelters for victims of domestic violence, and religious and community organizations in low income areas).

(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible individuals[22] who are most in need of the benefits, including pregnant women in the early months of pregnancy.

(D) Each local agency operating the program within a hospital and each local agency operating the program that has a cooperative arrangement with a hospital shall—

(i) advise potentially eligible individuals that receive inpatient or outpatient prenatal, maternity, or postpartum services, or accompany a child under the age of 5 who receives well-child services, of the availability of program benefits; and

(ii) to the extent feasible, provide an opportunity for individuals who may be eligible to be certified within the hospital for participation in such program.[23]

(9)(A)[24] The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(B) Any State agency that must suspend or terminate benefits to any participant during the participant's certification period due to a shortage of funds for the program shall first issue a notice to such participant. Such notice shall include, in addition to other information required by the Secretary, the categories of participants whose benefits are being suspended or terminated due to such shortage.[25]

(10) If an individual[26] certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that individual's[27] certification of eligibility shall remain valid for the period for which the individual[28] was originally certified.

(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to

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[19] P.L. 101-147, §213(a)(2)(A)(i), inserted "(A)".
[20] P.L. 101-147, §213(a)(2)(A)(ii), added subparagraph (B).
[21] P.L. 101-147, §326(b)(3)(A), struck out "persons" and substituted "individuals".
[22] P.L. 101-147, §326(b)(3)(A), struck out "persons" and substituted "individuals".
[23] P.L. 101-147, §123(a)(4)(B), added subparagraph (D).
[24] P.L. 101-147, §123(a)(4)(C)(i), inserted "(A)".
[25] P.L. 101-147, §123(a)(4)(C)(ii), added subparagraph (B).
[26] P.L. 101-147, §326(b)(3)(B)(i), struck out "a person" and substituted "an individual".
[27] P.L. 101-147, §326(b)(3)(B)(ii), struck out "person's" and substituted "individual's".
[28] P.L. 101-147, §326(b)(3)(B)(iii), struck out "person" and substituted "individual".

implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's funds for nutrition services and administration as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate. Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns, and, in the case of homeless individuals, the special needs and problems of such individuals.

(14) The State agency shall (A) provide nutrition education, breastfeeding promotion,[29] and drug abuse education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.

(16) To be eligible to participate in the program authorized by this section, a manufacturer of infant formula that supplies formula for the program shall—

(A) register with the Secretary of Health and Human Services under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.); and

(B) before bidding for a State contract to supply infant formula for the program, certify with the State health department that the formula complies with such Act and regulations issued pursuant to such Act.

(17) The State agency may adopt methods of delivering benefits to accommodate the special needs and problems of homeless individuals and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities[30].

(18)(A) Except as provided in subparagraph (B), a State agency may implement income eligibility guidelines under this section at the time the State implements income eligibility guidelines under the medicaid program.

(B) Income eligibility guidelines under this section shall be implemented not later than July 1 of each year.[31]

(19) Each local agency participating in the program under this section shall provide information about other potential sources of food assistance in the local area to individuals who apply in person to participate in the program under this section, but who cannot be served because the program is operating at capacity in the local area.[32]

(20) The State agency shall adopt policies that—

(A) require each local agency to attempt to contact each pregnant woman who misses an appointment to apply for participation in the program under this section, in order to reschedule the appointment, unless the phone number and the address of the woman are unavailable to such local agency; and

(B) in the case of local agencies that do not routinely schedule appointments for individuals seeking to apply or be recertified for participation in the program under this section, require each such local agency to schedule appointments for each employed individual seeking to apply or be recertified for participation in such program so as to minimize the time each such individual is absent from the workplace due to such application or request for recertification.[33]

(21) Each State agency shall conduct monitoring reviews of each local agency at least biennially.[34]

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[29] P.L. 101-147, §123(a)(4)(D), inserted ", breastfeeding promotion,".

[30] P.L. 101-147, §123(a)(4)(E), inserted "and to accommodate the special needs and problems of individuals who are incarcerated in prisons or juvenile detention facilities".

[31] P.L. 101-147, §123(a)(4)(F), added paragraph (18).

[32] P.L. 101-147, §123(a)(4)(F), added paragraph (19).

[33] P.L. 101-147, §123(a)(4)(F), added paragraph (20).

[34] P.L. 101-147, §213(a)(2)(B), added paragraph (21).

(g)(1) There are authorized to be appropriated to carry out this section $2,158,000,000 for the fiscal year 1990, and such sums as may be necessary for each of the fiscal years 1991, 1992, 1993, and 1994. As authorized by section 3 of the National School Lunch Act, appropriations to carry out the provisions of this section may be made not more than 1 year in advance of the beginning of the fiscal year in which the funds will become available for disbursement to the States, and shall remain available for the purposes for which appropriated until expended.[35]

(2)(A) Notwithstanding any other provision of law, unless enacted in express limitation of this subparagraph, the Secretary—

(i) in the case of legislation providing funds through the end of a fiscal year, shall issue—

(I) an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 15-day period beginning on the date of the enactment of such legislation; and

(II) subsequent allocations of funds provided by the enactment of such legislation not later than the beginning of each of the second, third, and fourth quarters of the fiscal year; and

(ii) in the case of legislation providing funds for a period that ends prior to the end of a fiscal year, shall issue an initial allocation of funds provided by the enactment of such legislation not later than the expiration of the 10-day period beginning on the date of the enactment of such legislation.

(B) In any fiscal year—

(i) unused amounts from a prior fiscal year that are identified by the end of the first quarter of the fiscal year shall be recovered and reallocated not later than the beginning of the second quarter of the fiscal year; and

(ii) unused amounts from a prior fiscal year that are identified after the end of the first quarter of the fiscal year shall be recovered and reallocated on a timely basis.[36]

(3) Notwithstanding any other provision of law, unless enacted in express limitation of this paragraph—

(A) the allocation of funds required by paragraph (2)(A)(i)(I) shall include not less than 1/3 of the amounts appropriated by the legislation described in such paragraph;

(B) the allocations of funds required by paragraph (2)(A)(i)(II) to be made not later than the beginning of the second and third quarters of the fiscal year shall each include not less than 1/4 of the amounts appropriated by the legislation described in such paragraph; and

(C) in the case of the enactment of legislation providing appropriations for a period of not more than 4 months, the allocation of funds required by paragraph (2)(A)(ii) shall include all amounts appropriated by such legislation except amounts reserved by the Secretary for purposes of carrying out paragraph (5).[37]

(4)[38] Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.

(5)[39] Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $5,000,000[40], shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, preparing the report required under subsection (d)(4), providing technical assistance to improve State agency administrative systems, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(6) Upon the completion of the 1990 decennial census, the Secretary, in coordination with the Secretary of Commerce, shall make available an estimate, by State and county (or equivalent political subdivision) of the number of women, infants, and children who are members of families that have incomes below the maximum income limit for participation in the program under this section.[41]

(h)(1)(A) Each fiscal year, the Secretary shall make available, from amounts appropriated for such fiscal year under subsection (g)(1) and amounts remaining from amounts appropriated under such subsection for the preceding fiscal year, an amount sufficient to guarantee a national average per participant grant to be allocated among

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[35] P.L. 101-147, §123(a)(5)(A), amended paragraph (1) in its entirety.
[36] P.L. 101-147, §123(a)(5)(C), added this paragraph (2).
[37] P.L. 101-147, §123(a)(5)(C), added this paragraph (3).
[38] P.L. 101-147, §123(a)(5)(B), redesignated the former paragraph (2) as paragraph (4).
[39] P.L. 101-147, §123(a)(5)(B), redesignated the former paragraph (3) as paragraph (5).
[40] P.L. 101-147, §123(a)(5)(D), struck out "$3,000,000" and substituted "$5,000,000".
[41] P.L. 101-147, §123(a)(5)(E), added paragraph (6).

State agencies for costs incurred by State and local agencies for nutrition services and administration for such year.

(B)(i) The amount of the national average per participant grant for nutrition services and administration for any fiscal year shall be an amount equal to the amount of the national average per participant grant for nutrition services and administration issued for the fiscal year 1987, as adjusted.

(ii) Such adjustment, for any fiscal year, shall be made by revising the national average per participant grant for nutrition services and administration for the fiscal year 1987 to reflect the percentage change between—

(I) the value of the index for State and local government purchases, using the implicit price deflator, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 1986; and

(II) the best estimate that is available as of the start of the fiscal year of the value of such index for the 12-month period ending June 30 of the previous fiscal year.

(C) In any fiscal year, amounts remaining from amounts appropriated for such fiscal year under subsection (g)(1) and from amounts appropriated under such section for the preceding fiscal year, after carrying out subparagraph (A), shall be made available for food benefits under this section, except to the extent that such amounts are needed to carry out the purposes of subsections (g)(4) and (g)(5).

(2)(A) For each of the fiscal years 1990, 1991, 1992, 1993 and 1994, the Secretary shall allocate to each State agency from the amount described in paragraph (1)(A) an amount for costs of nutrition services and administration on the basis of a formula prescribed by the Secretary. Such formula shall—

(i) be designed to take into account—

(I) the varying needs of each State;

(II) the number of individuals participating in each State; and

(III) other factors which serve to promote the proper, efficient, and effective administration of the program under this section;

(ii) provide for each State agency—

(I) an estimate of the number of participants for the fiscal year involved; and

(II) a per participant grant for nutrition services and administration for such year; and

(iii) provide for a minimum grant amount for State agencies.

(B)(i) Except as provided in clause (ii) and subparagraph (C), in any fiscal year, the total amount allocated to a State agency for costs of nutrition services and administration under the formula prescribed by the Secretary under subparagraph (A) shall constitute the State agency's operational level for such costs for such year even if the number of participants in the program at such agency is lower than the estimate provided under subparagraph (A)(ii)(I).

(ii) If a State agency's per participant expenditure for nutrition services and administration is more than 15 percent higher than its per participant grant for nutrition services and administration without good cause, the Secretary may reduce such State agency's operational level for costs of nutrition services and administration.

(C) In any fiscal year, the Secretary may reallocate amounts provided to State agencies under subparagraph (A) for such fiscal year. When reallocating amounts under the preceding sentence, the Secretary may provide additional amounts to, or recover amounts from, any State agency.

(3)(A) Except as provided in subparagraphs (B) and (C), in each fiscal year, each State agency shall expend—

(i) for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of—

(I) 1/6 of the amounts expended by the State for costs of nutrition services and administration; and

(II) an amount equal to a proportionate share of $8,000,000, with each State's share determined on the basis of the number of pregnant women and breastfeeding women in the program in the State as a percentage of the number of pregnant women and breastfeeding women in the program in all States; and

(ii) for breastfeeding promotion and support activities an amount that is not less than the amount determined for such State under clause (i)(II).

(B) The Secretary may authorize a State agency to expend an amount less than the amount described in subparagraph (A)(ii) for purposes of breastfeeding promotion and support activities if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct nutrition education activities at a level commensurate with the level at which such activities would be conducted if the amount described in subparagraph (A)(ii) were expended for such activities.

(C) The Secretary may authorize a State agency to expend for purposes of nutrition education an amount that is less than the difference between the aggregate amount described in subparagraph (A) and the amount expended by the State for breastfeeding promotion and support programs if—

(i) the State agency so requests; and

(ii) the request is accompanied by documentation that other funds will be used to conduct such activities.

(D) The Secretary shall limit to a minimal level any documentation required under this paragraph.

(4) The Secretary shall—

(A) in consultation with the Secretary of Health and Human Services, develop a definition of breastfeeding for the purposes of the program under this section;

(B) authorize the purchase of breastfeeding aids by State and local agencies as an allowable expense under nutrition services and administration;

(C) require each State agency to designate an agency staff member to coordinate breastfeeding promotion efforts identified in the State plan of operation and administration; and

(D) require the State agency to provide training on the promotion and management of breastfeeding to staff members of local agencies who are responsible for counseling participants in the program under this section concerning breastfeeding.

(5)(A) Subject to subparagraph (B), in any fiscal year that a State agency achieves, through use of acceptable measures, participation that exceeds the participation level estimated for such State agency under paragraph (2)(A)(ii)(I), such State agency may convert amounts allocated for food benefits for such fiscal year for costs of nutrition services and administration to the extent that such conversion is necessary—

(i) to cover allowable expenditures in such fiscal year; and

(ii) to ensure that the State agency maintains the level established for the per participant grant for nutrition services and administration for such fiscal year.

(B) If a State agency increases its participation level through measures that are not in the nutritional interests of participants or not otherwise allowable (such as reducing the quantities of foods provided for reasons not related to nutritional need), the Secretary may refuse to allow the State agency to convert amounts allocated for food benefits to defray costs of nutrition services and administration.

(C) For the purposes of this paragraph, the term "acceptable measures" includes use of cost containment measures, curtailment of vendor abuse, and breastfeeding promotion activities.

(6) In each fiscal year, each State agency shall provide, from the amounts allocated to such agency for such year for costs of nutrition services and administration, an amount to each local agency for its costs of nutrition services and administration. The amount to be provided to each local agency under the preceding sentence shall be determined under allocation standards developed by the State agency in cooperation with the several local agencies, taking into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as—

(A) local agency staffing needs;

(B) density of population;

(C) number of individuals served; and

(D) availability of administrative support from other sources.

(7) The State agency may provide in advance to any local agency any amounts for nutrition services and administration deemed necessary for successful commencement or significant expansion of program operations during a reasonable period following approval of—

(A) a new local agency;

(B) a new cost containment measure; or

(C) a significant change in an existing cost containment measure.

(8)(A) No State may receive its allocation under this subsection unless on or before August 30, 1989 (or a subsequent date established by the Secretary for any State) such State has—

(i) examined the feasibility of implementing cost containment measures with respect to procurement of infant formula, and, where practicable, other foods necessary to carry out the program under this section; and

(ii) initiated action to implement such measures unless the State demonstrates, to the satisfaction of the Secretary, that such measures would not lower costs or would interfere with the delivery of formula or foods to participants in the program.

(B)(i) Except as provided in subparagraphs (C), (D), and (E)(iii), in carrying out subparagraph (A), any State that provides for the purchase of foods under the program at retail grocery stores shall, with respect to the procurement of infant formula, use—

(I) a competitive bidding system; or

(II) any other cost containment measure that yields savings equal to or greater than savings generated by a competitive bidding system when such savings are determined by comparing the amounts of savings that would be provided over the full term of contracts offered in response to a single invitation to submit both competitive bids and bids for other cost containment systems for the sale of infant formula.

(ii) In determining whether a cost containment measure other than competitive bidding yields equal or greater savings, the State, in accordance with regulations issued by the Secretary, may take into account other cost factors (in addition to rebate levels and procedures for adjusting rebate levels when wholesale price levels rise), such as—

(I) the number of infants who would not be expected to receive the contract brand of infant formula under a competitive bidding system;

(II) the number of cans of infant formula for which no rebate would be provided under another rebate system; and

(III) differences in administrative costs relating to the implementation of the various cost containment systems (such as costs of converting a computer system for the purpose of operating a cost containment system and costs of preparing participants for conversion to a new or alternate cost containment system).

(C) In the case of any State that has a contract in effect on the date of the enactment of the Child Nutrition and WIC Reauthorization Act of 1989, subparagraph (B) shall not apply to the program operated by such State under this section until the term of such contract, as such term is specified by the contract as in effect on such date, expires. In the case of any State that has more than 1 such contract in effect on the date of the enactment of such Act, subparagraph (B) shall not apply until the term of the contract with the latest expiration date, as such term is specified by such contract as in effect on the date of the enactment of such Act, expires.

(D)(i) The Secretary shall waive the requirement of subparagraph (B) in the case of any State that demonstrates to the Secretary that—

(I) compliance with subparagraph (B) would be inconsistent with efficient or effective operation of the program operated by such State under this section; or

(II) the amount by which the savings yielded by an alternative cost containment system would be less than the savings yielded by a competitive bidding system is sufficiently minimal that the difference is not significant.

(ii) The Secretary shall prescribe criteria under which a waiver may be granted pursuant to clause (i).

(iii) The Secretary shall provide information at 6-month intervals to the Committee on Education and Labor of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on waivers that have been granted under clause (i).

(E)(i) The Secretary shall provide technical assistance to small Indian State agencies carrying out this paragraph in order to assist such agencies to achieve the maximum cost containment savings feasible.

(ii) The Secretary shall also provide technical assistance, on request, to State agencies that do not have large caseloads and that desire to consider a cost containment system that covers more than 1 State agency.

(iii) The Secretary may waive the requirement of subparagraph (B) in the case of any Indian State agency that has not more than 1,000 participants.

(F) No State may enter into a cost containment contract (in this subparagraph referred to as the "original contract") that prescribes conditions that would void, reduce the savings under, or otherwise limit the original contract if the State solicited or secured bids for, or entered into, a subsequent cost containment contract to take effect after the expiration of the original contract.

(G) Not later than the expiration of the 120-day period beginning on the date of the enactment of the Child Nutrition and WIC Reauthorization Act of 1989, the Secretary shall prescribe regulations to carry out this paragraph. Such regulations shall address issues involved in comparing savings from different cost containment measures, as provided under subparagraph (B).

(9) For purposes of this subsection, the term "cost containment measure" means a competitive bidding, rebate, direct distribution, or home delivery system implemented by a State agency as described in its approved plan of operation and administration.[42]

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[42] P.L. 101-147, §123(a)(6), amended subsection (h) in its entirety.

(i)(1) By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the amounts made available for food benefits under subsection (h)(1)(C)[43] on the basis of a formula determined by the Secretary.

(2) Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation.

(3)(A) Notwithstanding paragraph (2) and subject to subparagraphs (B) and (C)—

(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; and

(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.

(C) The total amount of funds transferred from any fiscal year under clauses (i) and (ii) of subparagraph (A) shall not exceed 1 percent of the amount of the funds allocated to a State agency for such fiscal year.

(D) For State agencies implementing cost containment measures as defined in subsection (h)(9)[44], not more than 5 percent of the amount of funds allocated under this section to such a State agency for supplemental foods for the fiscal year in which the system is implemented, and not more than 3[45] percent of the amount of funds allocated to such a State agency for the fiscal year following the fiscal year in which the system is implemented, may be expended by the State agency for expenses incurred under this section for supplemental foods during the succeeding fiscal year.

(E) Notwithstanding any other provision in this paragraph and paragraph (2) a State agency may, subject to the approval of the Secretary under subparagraph (F), expend not more than 3 percent of the amount of funds allocated to such agency for supplemental foods for the fiscal year 1991 for expenses incurred under this section for supplemental foods during the fiscal year 1990.[46]

(F) Each State agency which intends to use the authority provided in subparagraph (E) shall request approval from the Secretary in advance and shall submit a plan showing how the State's caseload will be managed to meet funding limitations. The Secretary shall review and make determinations on such plans on an expedited basis.[47]

(G) No State can use the authority provided under subparagraph (E) to increase the caseload level above the highest level to date in fiscal year 1990.[48]

(4) For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries.

(5) If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians.

(6) Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(7) In addition to any amounts expended under paragraph (3)(A)(i), any State agency using cost containment measures as defined in subsection (h)(9) may temporarily use amounts made available to such agency for the first quarter of a fiscal year to defray expenses for costs incurred during the final quarter of the preceding fiscal year. In any fiscal year, any State agency that uses amounts made available for a succeeding fiscal year under the authority of the preceding sentence shall restore or reimburse such amounts when such agency receives payment as a result of its cost containment measures for such expenses.[49]

(j) By October 1 of every other[50] year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

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[43] P.L. 101-147, §123(a)(7)(A), struck out "funds provided in accordance with this section" and substituted "amounts made available for food benefits under subsection (h)(1)(C)".

[44] P.L. 101-147, §123(a)(7)(B)(i), struck out "approved cost-savings strategies as identified in subsection (h)(5)(A)" and substituted "cost containment measures as defined in subsection (h)(9)".

[45] P.L. 101-147, §123(a)(7)(B)(ii), struck out "at the discretion of the Secretary, up to 5" and substituted "not more than 3".

[46] P.L. 101-330, §1, added subparagraph (E).

[47] P.L. 101-330, §1, added subparagraph (F).

[48] P.L. 101-330, §1, added subparagraph (G).

[49] P.L. 101-147, §123(a)(7)(C), added paragraph (7).

[50] P.L. 101-147, §123(a)(8), struck out "each" and substituted "every other".

(k)(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the "Council") composed of 24[51] members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental food program; one member shall be a person involved at the retail sales level of food in the special supplemental food program; two members shall be officials of the Department of Health and Human Services appointed by the Secretary of Health and Human Services; two members shall be officials of the Department of Agriculture appointed by the Secretary; 1[52] member shall be an expert in the promotion of breast feeding[53]; [54] one member shall be an expert in drug abuse education and prevention; and one member shall be an expert in alcohol abuse education and prevention.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health and Human Services shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Secretary shall designate a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.

(5) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(6) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(l) Foods available under section 416 of the Agriculture Act of 1949, including, but not limited to, dry milk, or purchased under section 32 of the Act of August 24, 1935, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(m)(1) Subject to the availability of funds appropriated for purposes of this subsection, the Secretary shall award a 3-year grant to up to 10 States that submit applications that are approved for the establishment of demonstration projects designed to provide recipients of assistance under subsection (c) with coupons that may be exchanged for foods at farmers' markets.

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[51] P.L. 101-147, §123(a)(9)(A), struck out "twenty-three" and substituted "24".

[52] As in original.

[53] As in original.

[54] P.L. 101-147, §123(a)(9)(B), inserted "1 member shall be an expert in the promotion of breast feeding;".

(2) A grant provided to any State under this subsection shall be provided to the chief executive officer of the State, who shall—

(A) designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations; and

(B) assure coordination of the program among the appropriate agencies and organizations.

(3) The Secretary shall not make a grant to any State under this subsection unless such State agrees to provide State funds for the demonstration project in an amount that is equal to not less than 30 percent of the total cost of the demonstration project which may be satisfied from State contributions that are made for similar projects.

(4)(A) The Secretary shall establish a formula for determining the amount of the grant to be awarded under this subsection to each State for which an application is approved under paragraph (6), according to the number of recipients proposed to participate as specified in the application of the State.

(B) If the sums appropriated for any fiscal year pursuant to the authorization contained in paragraph (10) for grants under this subsection are not sufficient to pay to each State for which an application is approved under paragraph (6) the amount which the Secretary determines each such State is entitled to under this subsection, each State's grant shall be ratably reduced.

(5) Each State that receives a grant under this subsection shall ensure that the demonstration project for which the grant is received complies with the following requirements:

(A) Persons who are eligible to receive Federal benefits under the project shall only be persons who are receiving assistance under subsection (c).

(B) Construction or operation of a farmers' market may not be carried out using funds—

(i) provided under the grant; or

(ii) required to be provided by the State under paragraph (3).

(C) The value of the Federal share of the benefit received by any recipient under the project may not be—

(i) less than $10 per year; or

(ii) more than $20 per year.

(D) The coupon issuance process under the project shall be designed to ensure that coupons target areas with—

(i) the highest concentration of eligible persons;

(ii) the greatest access to farmers' markets; and

(iii) certain characteristics, in addition to those described in clauses (i) and (ii), that are determined to be relevant by the Secretary that maximize the availability of benefits to eligible persons.

(E) The coupon redemption process under the project shall be designed to ensure that coupons may be—

(i) redeemed only by producers authorized by the State to participate in the project; and

(ii) redeemed only to purchase unprepared food for human consumption.

(F)(i) Except as provided in clauses (ii) and (iii), the State may not use for administration of such project for any fiscal year more than 10 percent of the total amount of project funds.

(ii) On the showing by the State of substantial need, the Secretary may permit a State to use up to an additional two percent of the total project funds for administration of such project for any fiscal year.

(iii) The provisions of clauses (i) and (ii) with respect to the use of project funds for the administration of the project shall not apply to any funds that a State may contribute in excess of the funds used by the State to meet the requirements under subparagraph (B).

(G) The State shall ensure that no State or local taxes are collected within the State on purchases of food with coupons distributed under the project.

(6)(A) A State that desires to receive a grant under this subsection shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require.

(B)(i) Each application submitted under this paragraph shall contain—

(I) the estimated cost of the program and the estimated number of individuals to be served by such program;

(II) a description of the State plan for complying with the requirements established in paragraph (5); and

(III) criteria developed by the State with respect to authorization of producers to participate in the program.

(ii) The criteria developed by the State as required by clause (i)(III) shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to recipients, in exchange for coupons distributed under the project.

(C) The Secretary shall establish objective criteria for the approval of applications submitted under this paragraph.

(D) In approving applications submitted under this paragraph, the Secretary shall—

(i) favorably consider a State's prior experiences with programs in existence as of the date of enactment of the Hunger Prevention Act of 1988;

(ii) favorably consider a State's operation of a similar project with State or local funds that can present data concerning the value of such project, and such data can be of assistance to other States interested in developing such farmers' market coupons projects;

(iii) award a grant to at least one applicant that proposes to operate the program on a Statewide basis;

(iv) give preference to applications from States that propose projects that are determined by the Secretary to—

(I) have possible national significance; or

(II) show unusual promise in promoting similar projects;

(v) give preference to applications that show promise of continued operation of the project for which the grant is requested after the grant expires;

(vi) require that if a State receives a grant under this section and that State is operating a similar project with State or local funds, that State shall not reduce in any fiscal year the amount of State and local funds available to the project in the preceding fiscal year after receiving funds for the project under this subsection; and

(vii) give preference to applications for projects that would serve areas in the State that have—

(I) the highest concentration of eligible persons;

(II) the greatest access to farmers' markets;

(III) broad geographical area;

(IV) the greatest number of participants in the broadest geographical area within the State; and

(V) any other characteristics, as determined appropriate by the Secretary, that maximize the availability of benefits to eligible persons.

(7)(A) The value of the benefit received by any recipient under any project for which a grant is received under this subsection may not affect the eligibility or benefit levels for assistance under any other State or Federal program.

(B) Any projects for which a grant is received under this subsection shall be supplementary to the food stamp program carried out under the Food Stamp Act of 1977[55] and to any other Federal or State program under which foods are distributed to needy families in lieu of food stamps.

(8) Each State that receives a grant under this subsection shall submit a report to the Secretary for each year of the grant period. Each such report shall include—

(A) the number of recipients served under the project for which the grant is received;

(B) the rate of redemption of coupons distributed under the project;

(C) the types of foods purchased with the coupons;

(D) the average amount distributed in coupons to each recipient;

(E) any change in the amount of food purchased at farmers' markets after the establishment of the project;

(F) any change in the number of farmers participating in farmers' markets after the establishment of the project;

(G) a description of how coupons were distributed to and redeemed by recipients in the State project; and

(H) any other information determined to be necessary by the Secretary.

(9)(A) The Secretary shall evaluate the projects for which grants are received under this subsection and submit to the Committee on Agriculture of the House of Representatives, the Committee on Education and Labor of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report on such evaluations.

(B) Such report shall be submitted before the end of the 2-year period beginning on the date that the last grant is awarded under this subsection.

(10) There are authorized to be appropriated to carry out this subsection $2,000,000 for fiscal year 1989, $2,800,000 for fiscal year 1990, and $3,500,000 for fiscal year 1991.

(11) For purposes of this subsection:

(A) The term "recipient" means a[56] individual[57] who is chosen by a State to receive benefits under a project.

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[55] P.L. 101-147, §326(b)(4)(A), struck out "(7 U.S.C. 2011 et seq.)".

[56] As in original; should be "an".

[57] P.L. 101-147, §326(b)(4)(B), struck out "person" and substituted "individual".

(B) The term "State agency" has the meaning provided in subsection (b)(13), except that such term also includes the agriculture department of each State.

(n)(1) The Secretary, before the end of the 6-month period beginning on the date of the enactment of the Anti-Drug Abuse Act of 1988[58], shall, directly or through grant or contract, conduct a study with respect to appropriate methods of drug abuse education instruction.

(2) The Secretary shall—

(A) directly, or through grant or contract, prepare materials for purposes of drug abuse education provided under this section; and

(B) distribute the materials prepared under subparagraph (A) to each State agency for distribution to local agencies participating in the program under this section.

(3) There is authorized to be appropriated—

(A) $500,000 for the fiscal year 1989 for purposes of carrying out the study required by paragraph (1);

(B) $2,750,000 for the fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year for purposes of preparing drug abuse education materials as required by paragraph (2)(A); and

(C) $6,750,000 for the fiscal year 1989 and such sums as may be necessary for each succeeding fiscal year for purposes of—

(i) distributing drug abuse education materials as required by paragraph (2)(B); and

(ii) making referrals under drug abuse education programs.

(4) The State agency, in each fiscal year, shall provide drug abuse education to participants in the program under this section commensurate with amounts appropriated for such fiscal year pursuant to the authorizations contained in paragraph (3).

(o)(1) Subject to the availability of funds appropriated for the purpose of carrying out this subsection, the Secretary is authorized to establish a demonstration program for the establishment of clinics for participants in the program under this section at community colleges that offer nursing education programs. In determining the location of clinics under this subsection, the Secretary shall consider—

(A) the location of the community college under consideration;

(B) its accessibility to individuals eligible to participate in the special supplemental food program under this section; and

(C) its willingness to operate the clinic during nontraditional hours.

(2) The Secretary shall, from funds appropriated for the purpose of carrying out this subsection—

(A) evaluate any demonstration program carried out under paragraph (1); and

(B) submit to the Congress a report containing the results of such evaluation.

(3) There is authorized to be appropriated for purposes of carrying out this subsection $1,000,000 for the fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991 and 1992.[59]

(p)(1) The Secretary is authorized to make grants to State agencies for the purpose of improving and updating information and data systems used for purposes of carrying out programs under this section.

(2) Any State that desires to receive a grant under this subsection shall submit an application to the Secretary at such time, and containing or accompanied by such information, as the Secretary may reasonably require. Grants shall be awarded based on the need demonstrated by States in their applications.

(3) There is authorized to be appropriated for purposes of carrying out this subsection $2,000,000 for the fiscal year 1990 and such sums as may be necessary for each of the fiscal years 1991, 1992, 1993, and 1994.[60]

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[*Internal References.*—S.S. Act §§1902(a) and 1920(b) cite the Child Nutrition Act of 1966 and S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a) and 1002(a) have footnotes referring to P.L. 89-642.]

P.L. 89-750, Approved November 3, 1966 (80 Stat. 1191)
Elementary and Secondary Education Amendments of 1966

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[58] P.L. 101-147, §326(b)(5), struck out "this Act" and substituted "the Anti-Drug Abuse Act of 1988".
[59] P.L. 101-147, §123(a)(10), added subsection (o).
[60] P.L. 101-147, §123(a)(10), added subsection (p).

SEC. 301. [20 U.S.C. 1201 note] **SHORT TITLE.**
This title may be cited as the "Adult Education Act".

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SEC. 312. [20 U.S.C. 1201a] **DEFINITIONS.**
As used in this title—

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(8) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then such agency or officer may be designated for the purpose of this title by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, such term shall mean an appropriate agency or officer designated for the purposes of this title by the Governor.

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SEC. 322. [20 U.S.C. 1203a] **USE OF FUNDS; LOCAL APPLICATIONS.**
(a) USE OF FUNDS.—

(1) Grants to States under this subpart shall be used in accordance with State plans (and amendments thereto) approved under sections 341 and 351, to pay the Federal share of the cost of the establishment or expansion of adult education programs to be carried out by local educational agencies and by public or private nonprofit agencies, organizations, and institutions. Grants provided under this section to States to carry out the programs described in the preceding sentence may be carried out by public or private nonprofit agencies, organizations, and institutions only if the applicable local educational agency has been consulted with and has had an opportunity to comment on the application of such agency, organization, or institution. The comments of the local educational agency, and responses thereto, shall be attached to the application when it is forwarded to the State.

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(3) The State educational agency shall not approve any application unless evidence that any consultation required by paragraph (1) has taken place is provided. Such application shall contain such information as the State educational agency considers necessary, including a description of current programs, activities, and services receiving assistance from Federal, State, and local sources; cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults as well as assurances that adult educational programs, services, or activities provided under this title are coordinated with and not duplicative of services, programs, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act[1], the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

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SEC. 331. [20 U.S.C. 1205] **STATE ADMINISTRATION.**
(a) STATE AGENCY RESPONSIBILITIES.—Any State desiring to participate in the programs authorized by this title shall designate the State educational agency to be the sole State agency responsible for the administration and supervision of such programs. The responsibilities of the State agency shall include—

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(2) consultation with the State advisory council established pursuant to section 332, and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under this title; and

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SEC. 342. [20 U.S.C. 1206a] **FOUR-YEAR STATE PLAN.**
(a) * * *

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[1] P.L. 101-476, §901(a)(3), provides that any Act or regulation which refers to the Education of the Handicapped Act shall be considered to refer to the Individuals with Disabilities Education Act.

(3)(A) Not less than 60 days before submission of the State plan to the Secretary under section 341, the State agency shall simultaneously submit the proposed State plan to (i) the State Board or agency for vocational education, (ii) the State Job Training Coordinating Council under the Job Training Partnership Act, and (iii) the State Board responsible for postsecondary education for review and comment. Such comments (to the extent such comments are received in a timely fashion) and the State's response shall be included with the State plan submitted to the Secretary. The Secretary shall consider such comments in reviewing such plan.

(B) Not less than 60 days before the submission of the State plan to the Secretary, such plan shall be submitted to the State advisory council (if such a council exists). Should the State advisory council find that it has substantial disagreement with the final State plan, the Council may file timely objections with the State agency. The State agency shall respond to all substantial objections of the State advisory council in submitting such plan to the Secretary. The Secretary shall consider such comments in reviewing the State plan.

(b) REQUIRED ASSESSMENTS.—In developing the 4-year State plan, each State shall (1) make a thorough assessment of (A) the needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those served and (B) the capability of existing programs and institutions to meet those needs, and (2) state the changes and improvements required in adult education to fulfill the purposes of this title, and the options for implementing these changes and improvements.

(c) COMPONENTS OF STATE PLAN.—Consistent with the assessments described in subsection (b) each such plan shall—

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(11) describe the methods proposed for the joint planning and coordination of programs carried out under this title with those conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational Education Act of 1963, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Education of the Handicapped Act[2], the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to assure maximum use of funds under these Acts and to avoid duplication of services;

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[*Internal Reference.*—S.S. Act §483(c) cites the Adult Education Act and has a footnote referring to P.L. 89-750.]

P.L. 90-248, Approved January 2, 1968 (81 Stat. 821)

Social Security Amendments of 1967

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SEC. 234. * * *

(c) [42 U.S.C. 1396a note] Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.

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SEC. 248. * * *

(c) [42 U.S.C. 602 note] Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a)(7) of such Act as in effect before the enactment of this Act nor the provisions of section 402(a)(8) of such Act as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act shall provide for the disregarding of income in making the determination under section 402(a)(7) of such Act in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a)(8) of such Act to reflect appropriately the applicable differences in income levels.

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[2] See footnote 1.

(d) [42 U.S.C. 1396b note] The amendment made by section 220(a) of this Act shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.

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INCENTIVES FOR ECONOMY WHILE MAINTAINING OR IMPROVING QUALITY IN THE PROVISION OF HEALTH SERVICES[1]

Sec. 402. [42 U.S.C. 1395b-1] (a)(1) The Secretary of Health, Education, and Welfare is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by the Social Security Act, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 401(c) of the Mental Retardation Facilities and Community Health Centers Construction Act of 1963),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by the Social Security Act, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under title XVIII of the Social Security Act; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

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[1] See 38 U.S.C. 5053 (this volume), with respect to the provision of hospital care or medical services by the Veterans Administration.

See P.L. 95-210, §3 (this volume), with respect to demonstration projects.

See P.L. 97-248, §122(i) (this volume), with respect to hospice demonstration projects and a report to Congress.

See P.L. 100-203, §4015 (this volume), with respect to Medicare payment demonstration projects; §4027, with respect to the home health prospective payment demonstration project for which the Secretary shall provide; and §4403(b), with respect to rural health research and demonstration projects.

See P.L. 100-360, §222 (this volume), with respect to adjustment of contracts with prepaid health plans.

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by the Social Security Act;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by the Social Security Act for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of title XVIII and title XIX of the Social Security Act, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under titles XVIII and XIX of this Act in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of title XI would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, "health programs established by the Social Security Act" means the program established by title XVIII of such Act and a program established by a plan of a State approved under title XIX of such Act.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) In the case of any experiment or demonstration project under subsection (a), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

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[*Internal References.*—S.S. Act §§202(t), 216(i), 1814(b), 1866(a), 1875(b), 1877(b) and 1886(c) cite the Social Security Amendments of 1967 and S.S. Act title I catchline and §§2(a), 402(a), 1002(a), 1402(a) and 1602(a)(State) have footnotes referring to P.L. 90-248.]

P.L. 90-321, Approved May 29, 1968 (82 Stat. 146)

Consumer Credit Protection Act

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SEC. 303. [15 U.S.C. 1673] * * *

(b)(1) The restrictions of subsection (a) do not apply in the case of[1]

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

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TITLE VI—CONSUMER CREDIT REPORTING

SEC. 601. Short title [15 U.S.C. 1601 note]

This title may be cited as the "Fair Credit Reporting Act".

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SEC. 603. [15 U.S.C. 1681a] * * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

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COMPULSORY USE OF ELECTRONIC FUND TRANSFERS

SEC. 913. [15 U.S.C. 1693k] No person may—

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(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

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[1] As in original; no punctuation.

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[*Internal References.*—S.S. Act §§465(a) and 466(b) cite the Consumer Credit Protection Act and §466(a) cites the Fair Credit Reporting Act (Title VI of P.L. 90-321) and S.S. Act §§205 and 1631 catchlines have footnotes referring to P.L. 90-321.]

P.L. 90-486, Approved August 13, 1968 (82 Stat. 755)

National Guard Technicians Act of 1968

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SEC. 6. [32 U.S.C. 709 note] (a) Notwithstanding section 709(d) of title 32, United States Code, a person who, on the date of enactment of this Act, is employed under section 709 of title 32, United States Code, and is covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, may elect, not later than the effective date of this Act, not to be covered by subchapter III of chapter 83 of title 5, United States Code, and with the consent of the State concerned or Commonwealth of Puerto Rico, to remain covered by the employee retirement system of, or plan sponsored by, that State or the Commonwealth of Puerto Rico. Unless such an election, together with a statement of approval by the State concerned or the Commonwealth of Puerto Rico, is filed with the Secretary of the Army or the Secretary of the Air Force, as appropriate, on or before the effective date of this Act, the person concerned is covered by subchapter III of chapter 83 of title 5, United States Code, as of that date.

(b) A member of the National Guard of a State or the Commonwealth of Puerto Rico who was employed as a technician under section 709 of title 32, United States Code, or prior corresponding provision of law, who—

(1) was involuntarily ordered to active duty after January 1, 1968, from that employment and has not been released from that duty prior to the effective date of this Act; or

(2) is on active duty under section 265, 3015, 3033, 3496, 8033 or 8496 of title 10, United States Code, on the effective date of this Act;

and was covered by a retirement system or plan of a State or the Commonwealth of Puerto Rico, may, if he is reemployed within sixty days under section 709 of title 32, United States Code, make the election described in subsection (a) of this section, within thirty days following the date of his reemployment.

(c) In the case of any person who files a valid election under this section to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, the United States may pay the amount of the employer's contributions to that system or plan that become due for periods beginning on or after the effective date of this Act. However, the payment by the United States, including any contribution that may be made by the United States toward the employer's tax imposed by section 3111 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 3111), may not exceed the amount which the employing agency would otherwise contribute on behalf of the person to the Civil Service Retirement and Disability Fund under section 8334(a) of title 5, United States Code. Notwithstanding section 8332(b) of title 5, United States Code, as amended by section 5 of this Act, the service under section 709 of title 32, United States Code, or prior corresponding provision of law, of a person who has made an election to remain covered by the employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall not be creditable toward eligibility for or amount of annuity under subchapter III of chapter 83 of title 5, United States Code. A person who retires pursuant to his valid election shall not be eligible for any rights, benefits, or privileges to which retired civilian employees of the United States may be entitled.

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[*Internal Reference.*—S.S. Act §218(b) cites the National Guard Technicians Act of 1968.]

P.L. 91-230, Approved April 13, 1970 (84 Stat. 121)

[Education Assistance Programs]

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PART A—GENERAL PROVISIONS

SHORT TITLE: STATEMENT OF FINDINGS AND PURPOSE

SEC. 601. [20 U.S.C. 1400] (a) This title may be cited as the "Individuals with Disabilities Education Act".[1]

* * * * * * *

DEFINITIONS

SEC. 602. [20 U.S.C. 1401] (a) As used in this title—

(1) The term "children with disabilities"[2] means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

* * * * * * *

(16) The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability[3], including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(17) The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability[4] to benefit from special education, and includes the early identification and assessment of disabling[5] conditions in children.

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PART B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

SEC. 613. [20 U.S.C. 1413]

* * * * * * *

(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities[6] within the State.

* * * * * * *

PART H—HANDICAPPED INFANTS AND TODDLERS

SEC. 671. [20 U.S.C. 1471]

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(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities[7] and their families,

(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants

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[1] P.L. 101-476, §901(a)(1), amended this sentence in its entirety.

[2] P.L. 101-476, §901(b)(10), struck out "handicapped children" and substituted "children with disabilities".

[3] P.L. 101-476, §901(b)(13), struck out "handicapped child" and substituted "child with a disability".

[4] P.L. 101-476, §901(b)(14), struck out "handicapped child" and substituted "child with a disability".

[5] P.L. 101-476, §901(b)(15), struck out "handicapping" and substituted "disabling".

[6] P.L. 101-476, §901(b)(58), struck out "handicapped children" and substituted "children with disabilities".

[7] P.L. 101-476, §901(b)(160), struck out "handicapped infants and toddlers" and substituted "infants and toddlers with disabilities".

and toddlers with disabilities[8], and their families.

* * * * * * *

Sec. 681. [20 U.S.C. 1481]

* * * * * * *

(b) Reduction of Other Benefits.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities[9]) within the State.

* * * * * * *

[*Internal References.*—S.S. Act §§1903(c) and 1915(c) cite the Education of the Handicapped Act (Individuals with Disabilities Education Act) and P.L. 91-230, §205(d) (this volume) has a footnote to P.L. 91-230.]

P.L. 91-373, Approved August 10, 1970 (84 Stat. 695)
Employment Security Amendments of 1970

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SHORT TITLE

Sec. 201. [26 U.S.C. 3304 note] This title may be cited as the "Federal-State Extended Unemployment Compensation Act of 1970".

* * * * * * *

EXTENDED BENEFIT PERIOD

Beginning and Ending

Sec. 203. [26 U.S.C. 3304 note] (a) For purposes of this title, in the case of any State, an extended benefit period—

(1) shall begin with the third week after the first week for which there is a State "on" indicator; and

(2) shall end with the third week after the first week for which there is a State "off" indicator.

Special Rules

(b)(1) In the case of any State—

(A) no extended benefit period shall last for a period of less than thirteen consecutive weeks, and

(B) no extended benefit period may begin before the fourteenth week after the close of a prior extended benefit period with respect to such State.

(2) When a determination has been made that an extended benefit period is beginning or ending with respect to a State, the Secretary shall cause notice of such determination to be published in the Federal Register.

Eligibility Period

(c) For purposes of this title, an individual's eligibility period under the State law shall consist of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period.

State "On" and "Off" Indicators

(d) For purposes of this section—

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[8] P.L. 101-476, §901(b)(161), struck out "handicapped infants and toddlers" and substituted "infants and toddlers with disabilities".

[9] P.L. 101-476, §901(b)(181), struck out "handicapped infants and toddlers" and substituted "infants or toddlers with disabilities".

(1) There is a State "on" indicator for a week if the rate of insured unemployment under the State law for the period consisting of such week and the immediately preceding twelve weeks—

(A) equaled or exceeded 120 per centum of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and

(B) equaled or exceeded 5 per centum.

(2) There is a State "off" indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, either subparagraph (A) or subparagraph (B) of paragraph (1) is not satisfied.

Effective with respect to compensation for weeks of unemployment beginning after March 30, 1977 (or, if later, the date established pursuant to State law), the State may by law provide that the determination of whether there has been a State "on" or "off" indicator beginning or ending any extended benefit period shall be made under this subsection as if (i) paragraph (1) did not contain subparagraph (A) thereof, and (ii) the figure "5" contained in subparagraph (B) thereof were "6"; except that, notwithstanding any such provision of State law, any week for which there would otherwise be a State "on" indicator shall continue to be such a week and shall not be determined to be a week for which there is a State "off" indicator. For purposes of this subsection, the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period.

Rate of Insured Unemployment; Covered Employment

(e)(1) For purposes of subsection (d), the term "rate of insured unemployment" means the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for regular compensation for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by the State agency to the Secretary, by

(B) the average monthly covered employment for the specified period.

(2) Determinations under subsection (d) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

PAYMENTS TO STATES

SEC. 204. [26 U.S.C. 3304 note]

* * * * * * *

Certification

(e) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, by transfers from the extended unemployment compensation account to the account of such State in the Unemployment Trust Fund.

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[*Internal References.*—S.S. Act §§905(c) and (d) and 1202(b) cite the Federal-State Extended Unemployment Compensation Act of 1970.]

P.L. 91-513, Approved October 27, 1970 (84 Stat. 1236)

Comprehensive Drug Abuse Prevention and Control Act of 1970

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SHORT TITLE

SEC. 100. [21 U.S.C. 801 note] This title may be cited as the "Controlled Substances Act".

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DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION

SEC. 304. [21 U.S.C. 824] (a) A registration pursuant to section 303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

* * * * * * *

(5) has been excluded (or directed to be excluded) from participation in a program pursuant to section 1128(a) of the Social Security Act.

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[*Internal Reference.*—S.S. Act §1128(d) and (g) cites the Controlled Substances Act.]

P.L. 91-646, Approved January 2, 1971 (84 Stat. 1894)
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

* * * * * * *

PAYMENTS NOT TO BE CONSIDERED AS INCOME

SEC. 216. [42 U.S.C. 4636] No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law (except for any Federal law providing low-income housing assistance).

* * * * * * *

[*Internal References.*—S.S. Act §1612(b) catchline and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 91-646.]

P.L. 92-203, Approved December 18, 1971 (85 Stat. 688)
Alaska Native Claims Settlement Act

* * * * * * *

SEC. 7. [43 U.S.C. 1606] (a) For purposes of this Act, the State of Alaska shall be divided by the Secretary within one year after the date of enactment at[1] this Act into twelve geographic regions, with each region composed as far as practicable of Natives having a common heritage and sharing common interests. In the absence of good cause shown to the contrary, such regions shall approximate the areas covered by the operations of the following existing Native associations:

(1) Arctic Slope Native Association (Barrow, Point Hope);

(2) Bering Straits Association (Seward Peninsula, Unalakleet, Saint Lawrence Island);

(3) Northwest Alaska Native Association (Kotzebue);

(4) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the Lower Yukon River and the Lower Kuskokwim River);

(5) Tanana Chiefs' Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokwim, Tanana River);

(6) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna);

(7) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula);

(8) Aleut League (Aleutian Islands, Pribilof Islands and that part of the Alaska Peninsula which is in the Aleut League);

(9) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez, and Seward);

(10) Tlingit-Haida Central Council (southeastern Alaska, including Metlakatla);

(11) Kodiak Area Native Association (all villages on and around Kodiak Island); and

(12) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

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[1] As in original. Probably should be "of".

Any dispute over the boundaries of a region or regions shall be resolved by a board of arbitrators consisting of one person selected by each of the Native associations involved, and an additional one or two persons, whichever is needed to make an odd number of arbitrators, such additional person or persons to be selected by the arbitrators selected by the Native associations involved.

* * * * * * *

(h)(1) RIGHTS AND RESTRICTIONS.—(A) Except as otherwise expressly provided in this Act, Settlement Common Stock of a Regional Corporation shall—

(i) carry a right to vote in elections for the board of directors and on such other questions as properly may be presented to shareholders;

(ii) permit the holder to receive dividends or other distributions from the corporation; and

(iii) vest in the holder all rights of a shareholder in a business corporation organized under the laws of the State.

(B) Except as otherwise provided in this subsection, Settlement Common Stock, inchoate rights thereto, and rights to dividends or distributions declared with respect thereto shall not be—

(i) sold;
(ii) pledged;
(iii) subjected to a lien or judgment execution;
(iv) assigned in present or future;
(v) treated as an asset under—
(I) title 11 of the United States Code or any successor statute,
(II) any other insolvency or moratorium law, or
(III) other laws generally affecting creditors' rights; or
(vi) otherwise alienated.

(C) Notwithstanding the restrictions set forth in subparagraph (B), Settlement Common Stock may be transferred to a Native or a descendant of a Native—

(i) pursuant to a court decree of separation, divorce, or child support;

(ii) by a holder who is a member of a professional organization, association, or board that limits his or her ability to practice his or her profession because he or she holds Settlement Common Stock; or

(iii) as an inter vivos gift from a holder to his or her child, grandchild, great-grandchild, niece, or nephew.

(2) INHERITANCE OF SETTLEMENT COMMON STOCK.—(A) Upon the death of a holder of Settlement Common Stock, ownership of such stock (unless canceled in accordance with subsection (g)(1)(B)(iii)) shall be transferred in accordance with the lawful will of such holder or pursuant to applicable laws of intestate succession. If the holder fails to dispose of his or her stock by will and has no heirs under applicable laws of intestate succession, the stock shall escheat to the issuing Regional Corporation and be canceled.

(B) The issuing Regional Corporation shall have the right to purchase at fair value Settlement Common Stock transferred pursuant to applicable laws of intestate succession to a person not a Native or a descendant of a Native after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987 if—

(i) the corporation—

(I) amends its articles of incorporation to authorize such purchases, and

(II) gives the person receiving such stock written notice of its intent to purchase within ninety days after the date that the corporation either determines the decedent's heirs in accordance with the laws of the State or receives notice that such heirs have been determined, whichever later occurs; and

(ii) the person receiving such stock fails to transfer the stock pursuant to paragraph (1)(C)(iii) within sixty days after receiving such written notice.

(C) Settlement Common Stock of a Regional Corporation—

(i) transferred by will or pursuant to applicable laws of intestate succession after the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987, or

(ii) transferred by any means prior to the date of the enactment of the Alaska Native Claims Settlement Act Amendments of 1987,

to a person not a Native or a descendant of a Native shall not carry voting rights. If at a later date such stock is lawfully transferred to a Native or a descendant of a Native, voting rights shall be automatically restored.

(3) REPLACEMENT COMMON STOCK.—(A) On the date on which alienability restrictions terminate in accordance with the provisions of section 37, all Settlement Common Stock previously issued by a Regional Corporation shall be deemed canceled, and shares of Replacement Common Stock of the appropriate class shall be issued to each

shareholder, share for share, subject only to subparagraph (B) and to such restrictions consistent with this Act as may be provided by the articles of incorporation of the corporation or in agreements between the corporation and individual shareholders.

(B)(i) Replacement Common Stock issued in exchange for Settlement Common Stock issued subject to the restriction authorized by subsection (g)(1)(B)(iii) shall bear a legend indicating that the stock will eventually be canceled in accordance with the requirements of that subsection.

(ii) Prior to the termination of alienability restrictions, the board of directors of the corporation shall approve a resolution to provide that each share of Settlement Common Stock carrying the right to share in distributions made to shareholders pursuant to subsections (j) and (m) shall be exchanged either for—

(I) a share of Replacement Common Stock that carries such right, or

(II) a share of Replacement Common Stock that does not carry such right together with a separate, non-voting security that represents only such right.

(iii) Replacement Common Stock issued in exchange for a class of Settlement Common Stock carrying greater per share voting power than Settlement Common Stock issued pursuant to subsections (g)(1)(A) and (g)(1)(B) shall carry such voting power and be subject to such other terms as may be provided in the amendment to the articles of incorporation authorizing the issuance of such class of Settlement Common Stock.

(C) The articles of incorporation of the Regional Corporation shall be deemed amended to authorize the issuance of Replacement Common Stock and the security described in subparagraph (B)(ii)(II).

(D) Prior to the date on which alienability restrictions terminate, a Regional Corporation may amend its articles of incorporation to impose upon Replacement Common Stock one or more of the following—

(i) a restriction denying voting rights to any holder of Replacement Common Stock who is not a Native or a descendant of a Native;

(ii) a restriction granting the Regional Corporation, or the Regional Corporation and members of the shareholder's immediate family who are Natives or descendants of Natives, the first right to purchase, on reasonable terms, the Replacement Common Stock of the shareholder prior to the sale or transfer of such stock (other than a transfer by will or intestate succession) to any other party, including a transfer in satisfaction of a lien, writ of attachment, judgment execution, pledge, or other encumbrance; and

(iii) any other term, restriction, limitation, or provision authorized by the laws of the State.

(E) Replacement Common Stock shall not be subjected to a lien or judgment execution based upon any asserted or unasserted legal obligation of the original recipient arising prior to the issuance of such stock.

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Sec. 8 [43 U.S.C. 1607] * * *

(c) Applicability of Section 7.—The provisions of subsections (g), (h), and (o) of section 7 shall apply in all respects to Village Corporations, Urban Corporations, and Group Corporations.

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[*Internal References.*—S.S. Act §§428(c), 482(i), and 1613(a) cite the Alaska Native Claims Settlement Act.]

P.L. 92-318, Approved June 23, 1972 (86 Stat. 235)
Education Amendments of 1972

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TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

Sec. 901. [20 U.S.C. 1681] (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education[1] or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

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[1] P.L. 96-88, §507, deems this reference to be to the Secretary of Education.

FEDERAL ADMINISTRATIVE ENFORCEMENT

SEC. 902. [20 U.S.C. 1682] Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

JUDICIAL REVIEW

SEC. 903. [20 U.S.C. 1683] Any department or agency action taken pursuant to section 1002 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political-subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

SEC. 904. [20 U.S.C. 1684] No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any education program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

EFFECT ON OTHER LAWS

SEC. 905. [20 U.S.C. 1685] Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

SEC. 907. [20 U.S.C. 1686] Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

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[*Internal Reference.*—S.S. Act §508(a) cites the Education Amendments of 1972.]

P.L. 92-336, Approved July 1, 1972 (86 Stat. 406)
[Public Debt Limit—Extension]

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SEC. 201.

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(h) * * *

(2) [42 U.S.C. 403 note] In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.

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[*Internal Reference.*—S.S. Act §1902(a) cites Public Law 92-336.]

P.L. 92-463, Approved October 6, 1972 (86 Stat. 770)
Federal Advisory Committee Act

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FINDINGS AND PURPOSES

SEC. 2. [5 U.S.C. App. §2] (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

SEC. 3. [5 U.S.C. App. §3] For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget[1].

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

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[1] Reorganization Plan No. 1 of 1977, §5F, transferred the functions of the Office of Management and Budget to the Administrator of General Services.

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. [5 U.S.C. App. §4] (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. [5 U.S.C. App. §5] (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. [5 U.S.C. App. §6] (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. [5 U.S.C. App. §7] (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission[2], shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

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[2] Reorganization Plan No. 2 of 1978, §102, transferred the functions of the Civil Service Commission to the Director of the Office of Personnel Management.

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5),

may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. [5 U.S.C. App. §8] (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. [5 U.S.C. App. §9] (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. [5 U.S.C. App. §10] (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. [5 U.S.C. App. §11] (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. [5 U.S.C. App. §12] (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. [5 U.S.C. App. §13] Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. [5 U.S.C. App. §14] (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

SEC. 15. [5 U.S.C. App. §15] Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

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[*Internal References.*—S.S. Act §1886(e) cites the Federal Advisory Committee Act and S.S. Act §§706 and 1114 catchlines have footnotes referring to P.L. 92-463.]

P.L. 92-603, Approved October 30, 1972 (86 Stat. 1329)

Social Security Amendments of 1972

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INCREASED WIDOW'S AND WIDOWER'S INSURANCE BENEFITS

SEC. 102. * * *

(g) [42 U.S.C. 402 note] (1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act as if the amendments made by this section had been in effect for the first month of such individual's entitlement to such benefits.

(2) For purposes of paragraph (1)—

(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

(B) any deductions under subsections (b) and (c) of section 203 of such Act, applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act (as amended by this Act).

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AGE-62 COMPUTATION POINT FOR MEN

SEC. 104. * * *

(j) * * *

(2) [42 U.S.C. 414 note] In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly benefits under title II of the Social Security Act for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

(3) [42 U.S.C. 414 note] (A) In the case of a man who attains or will attain age 62 in 1973, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "64".

(B) In the case of a man who attains or will attain age 62 in 1974, the figure "65" in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act shall be deemed to read "63".

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ACCEPTANCE OF MONEY GIFTS MADE UNCONDITIONALLY TO SOCIAL SECURITY

SEC. 132. * * *

(g) [42 U.S.C. 401 note] For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act, shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.

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DEMONSTRATIONS AND REPORTS; PROSPECTIVE REIMBURSEMENT; EXTENDED CARE; INTERMEDIATE CARE AND HOMEMAKER SERVICES; AMBULATORY SURGICAL CENTERS; PHYSICIANS' ASSISTANTS; PERFORMANCE INCENTIVE CONTRACTS[1]

SEC. 222. (a) [42 U.S.C. 1395b-1 note] (1) The Secretary of Health, Education, and Welfare, directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act and under State plans approved under title XIX of such Act, including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consid-

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[1] See P.L. 100-360, §222, with respect to adjustment of contracts with prepaid health plans (this volume).

eration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act) and from funds appropriated under title XIX of such Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.

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PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS

SEC. 226. * * *

(b) ⟦42 U.S.C. 1395mm note⟧ (1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act, any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act for individuals who are members of such organizations.

(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act, with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act.

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PAYMENT FOR DURABLE MEDICAL EQUIPMENT UNDER MEDICARE

SEC. 245. [42 U.S.C. 1395x note] (a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act.

(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.

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ADVANCES FROM OASI TRUST FUND FOR ADMINISTRATIVE EXPENSES

SEC. 305. * * *

(b) [42 U.S.C. 401 note] (1) Sums appropriated pursuant to section 1601 of the Social Security Act shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act, to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) on account of the costs of administration of title XVI of such Act (as added by section 301 of this Act).

(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a)[2] shall cease to be effective at the close of the fiscal year following such fiscal year.

(3) As used in this subsection, the term "Trust Funds" has the meaning given it in section 201(g)(1)(A) of the Social Security Act.

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LIMITATION ON FISCAL LIABILITY OF STATES FOR OPTIONAL STATE SUPPLEMENTATION[3]

SEC. 401. [42 U.S.C. 1382e note]

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[2] P.L. 92-603, §305, was enacted and became effective October 30, 1972.

[3] See P.L. 93-233, §8(d), with respect to cash payments in lieu of food stamps to recipients of SSI benefits, in this volume.

(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.

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[*Internal References.*—S.S. Act §§202(e) and (f), 215(b), 1101(a), 1814(b), 1866(a), 1875(b), 1877(b) and 1886(c) cite the Social Security Amendments of 1972 and S.S. Act §§201(g) and (i), 1616(d), and 1861(s) have footnotes referring to P.L. 92-603.]

P.L. 93-66, Approved July 9, 1973 (87 Stat. 152)

[Cost-of-Living Increase in Social Security Benefits]

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SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS

SEC. 211. [42 U.S.C. 1382 note] (a)(1) In determining (for purposes of title XVI of the Social Security Act, as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act, shall each be increased by $876 for each such essential person, and

(B) the income and resources of such individual shall (for purposes of such title XVI) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

(C) does not but would (except for the provisions of subparagraph (B)) meet—

(i) the criteria established with respect to income in section 1611(a) of such Act, or

(ii) the criteria established with respect to resources by such section 1611(a) (or, if applicable, by section 1611(g) of such Act).

(2) The provisions of section 1611(g) of the Social Security Act (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

(b) For purposes of this section, an individual shall be a "qualified individual" only if—

(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act, and

(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

(A) was living in the home of such individual, and

(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

(c) The term "essential person", when used in connection with any qualified individual, means a person who—

(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

(2) lives in the home of such individual,

(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act (as in effect after December 1973), and

(4) is not the eligible spouse (as that term is used in such title XVI) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SSI BENEFITS PROGRAM

SEC. 212. [42 U.S.C. 1382 note] (a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX, with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the "Secretary") whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act, as enacted by section 301 of the Social Security Amendments of 1972[1]), and

(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act)

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

(C) the month in which such individual dies, or

(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act by reason of the provisions of section 1611(e)(1)(A), (2), or (3), 1611(f), or 1615(c) of such Act.

(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's "December 1973 income" (as determined under subparagraph (B)) exceeds the amount of such individual's "title XVI benefit plus other income" (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

(B) For purposes of subparagraph (A), an individual's "December 1973 income" means an amount equal to the aggregate of—

(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92-603, if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act, and (II) the level of which has been found by the Secretary pursuant to section 8 of Public Law 93-233 to have been specifically increased so as to include the bonus value of food stamps, and

(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

(C) For purposes of subparagraph (A), the amount of an individual's "title XVI benefit plus other income" for any month means an amount equal to the aggregate of—

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[1] P.L. 92-603 (86 Stat. 1329), approved October 30, 1972.

(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act, and

(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act, such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act, and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.[2]

(4) Any State having an agreement with the Secretary under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act, or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).[3]

(b)(1) Any State having an agreement with the Secretary under subsection (a) may enter into an administration agreement with the Secretary whereby the Secretary will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

(2) Any such administration agreement between the Secretary and a State entered into under this subsection shall provide that the State will (A) certify to the Secretary the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act, together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Secretary with such additional data at such times as the Secretary may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

(3) Any State which has entered into an administration agreement under this subsection shall, at such times and in such installments as may be agreed upon between the Secretary and the State, pay to the Secretary an amount equal to the expenditures made by the Secretary as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a).

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[2] See P.L. 94-566, §503, for the situation in which payments under this subsection are deemed to be benefits under title XVI of the Social Security Act, in this volume.

[3] See P.L. 96-265, §201(e), with respect to the maintenance of separate accounts, in this volume.

(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act (as so in effect).

(2) Supplementary payments made by the Secretary (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972, be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Secretary, the provisions of subsection (b) of such section 401.

(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Secretary under section 1616 of the Social Security Act under which—

(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

(e) Except as the Secretary may by regulations otherwise provide, the provisions of title XVI of the Social Security Act (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title, relating to the terms and conditions under which the benefits authorized by such title are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Secretary by such title may, where appropriate, be exercised by him in the administration of this section.

(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act.

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COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

SEC. 230. [42 U.S.C. 1396a note] In the case of any State plan (approved under title XIX of the Social Security Act) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act, there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

(1) the individual (referred to in the last sentence of section 1905(a) of such Act) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

PERSONS IN MEDICAL INSTITUTIONS

SEC. 231. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for all (or any part of) the month of December 1973—

(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act, and

(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act, and

(B),[4] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

SEC. 232. [42 U.S.C. 1396a note] For purposes of section 1902(a)(10) of the Social Security Act, any individual who, for the month of December 1973 was eligible for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act), shall be deemed for purposes of title XIX to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX (as it was in effect in December 1973). Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.

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[*Internal References.*—S.S. Act §§228(d); 1127(b); 1617(a), (b), and (c); 1618(a), (e), (f), and (g); 1620(b); 1631(b), (e), (g), and (i); 1634(b); 1905(k) and (q); and 1927(a) and (b) cite Public Law 93-66 and S.S. Act §1611 catchline and §1902(a) have footnotes referring to P.L. 93-66.]

P.L. 93-86, Approved August 10, 1973 (87 Stat. 221)

Agriculture and Consumer Protection Act of 1973

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SEC. 4. [7 U.S.C. 612c note] (a) Notwithstanding any other provision of law, the Secretary may, during fiscal years 1991 through 1995[1], purchase and distribute sufficient agricultural commodities with funds appropriated from the general fund of the Treasury to maintain the traditional level of assistance for food assistance programs as are authorized by law, including but not limited to distribution to institutions (including hospitals and facilities caring for needy infants and children)[2], supplemental feeding programs serving women, infants, and children or elderly persons, or both,[3] wherever located, disaster areas, summer camps for children, the United States Trust Territory of the Pacific Islands, and Indians, whenever a tribal organization requests distribution of federally donated foods pursuant to section 4(b) of the Food Stamp Act of 1977. In providing for commodity distribution to Indians, the Secretary shall improve the variety and quantity of commodities supplied to Indians in order to provide them an opportunity to obtain a more nutritious diet.

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[4] As in original.

[1] P.L. 101-624, §1771(a), struck out "1986, 1987, 1988, 1989, and 1990" and substituted "1991 through 1995".

[2] P.L. 101-624, §1771(b)(1), inserted "(including hospitals and facilities caring for needy infants and children)".

[3] P.L. 101-625, §1771(c)(1), inserted "serving women, infants, and children or elderly persons, or both,".

[*Internal Reference*.—S.S. Act §1920(b) cites the Agriculture and Consumer Protection Act of 1973.]

P.L. 93-112, Approved September 26, 1973 (87 Stat. 355)
Rehabilitation Act of 1973

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STATE ALLOTMENTS

SEC. 110. [29 U.S.C. 730] (a)(1) Subject to the provisions of subsection (d), for each fiscal year beginning before October 1, 1978, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under section 100(b)(1) for allotment under this section as the product of (A) the population of the State, and (B) the square of its allotment percentage, bears to the sum of the corresponding products for all the States.

(2)(A) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment in an amount equal to the amount such State received under paragraph (1) for the fiscal year ending September 30, 1978, and an additional amount determined pursuant to subparagraph (B) of this paragraph.

(B) For each fiscal year beginning on or after October 1, 1978, each State shall be entitled to an allotment, from any amount authorized to be appropriated for such fiscal year under section 100(b)(1)(A) for allotment under this section in excess of the amount appropriated under section 100(b)(1)(A) for the fiscal year ending September 30, 1978, in an amount equal to the sum of—

(i) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and the square of its allotment percentage bears to the sum of the corresponding products for all the States; and

(ii) an amount bearing the same ratio to 50 percent of such excess amount as the product of the population of the State and its allotment percentage bears to the sum of the corresponding products for all the States.

(3) The sum of the payment to any State (other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) under this subsection for any fiscal year which is less than one-third of 1 percent of the amount appropriated under section 100(b)(1)(A), or $3,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment to each of the remaining such States under this subsection, but with such adjustments as may be necessary to prevent the sum of the allotments made under this subsection to any such remaining State from being thereby reduced to less than that amount.

(4) For each fiscal year beginning on or after October 1, 1984, for which any amount is appropriated pursuant to section 100(b)(1)(B), each State shall receive an allocation (from such appropriated amount) in addition to the allotment to which such State is entitled under paragraphs (2) and (3) of this subsection. Such additional allocation shall be an amount which bears the same ratio to the amount so appropriated as that State's allotment under paragraphs (2) and (3) of this subsection bears to the sum of such allotments of all the States.

(b)(1) If the payment to a State under section 111(a) for a fiscal year is less than the total payments such State received under section 2 of the Vocational Rehabilitation Act for the fiscal year ending June 30, 1973, such State shall be entitled to an additional payment (subject to the same terms and conditions applicable to other payments under this part) equal to the difference between such payment under section 111(a) and the amount so received by it.

(2) If a State receives as its Federal share under section 111(a) for any fiscal year less than the applicable Federal share of the expenditure of such State for fiscal year 1972 for vocational rehabilitation services under the plan for such State approved under section 101 (including any amount expended by such State for the administration of the State plan but excluding any amount expended by such State from non-Federal sources for construction under such plan), such State shall be entitled to an additional payment for such fiscal year, subject to the same terms and conditions applicable to other payments under this part, equal to the difference between such payment under section 111(a) and an amount equal to the applicable Federal share of such expenditure for vocational rehabilitation services.

(3) Any payment attributable to the additional payment to a State under this subsection shall be made only from appropriations specifically made to carry out this subsection, and such additional appropriations are hereby authorized.

(c)(1) Not later than forty-five days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this title to one or more other States to the extent the Commissioner determines that such other State will be able to use such additional amount during that fiscal year or to pay for initial expenditures during the subsequent fiscal year for carrying out such purposes.

(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.

(d)(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 100(b)(1) for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part D of this title.

(2) For any fiscal year the sum shall be not less than 1/4 of one percent and not more than one percent of the amount under paragraph (1), as determined by the Secretary.

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NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS

Sec. 504. [29 U.S.C. 794] (a) No otherwise qualified individual with handicaps in the United States, as defined in section 7(8), shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 1471(12) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on the date of the enactment of this subsection.

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PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 613. [29 U.S.C. 795b]

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(c) No part of the wages, allowances, or reimbursement for transportation and attendant care costs made available to an eligible individual employed in any project funded under this part shall be treated as income or benefits for the purpose of any other program or provision of State or Federal law, unless the Secretary makes a case by case determination that disallowance of such income or benefits is inequitable or does not carry out the purposes of this title.

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[*Internal References.*—S.S. Act §§222(a), (b), and (d), 225(b), 508(a) and (b), 1136(f), 1615(a), (c), and (d), 1631(a), and 1915(c) cite the Rehabilitation Act of 1973 and S.S. Act §1612(b) catchline and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 93-112.]

P.L. 93-113, Approved October 1, 1973 (87 Stat. 394)

Domestic Volunteer Service Act of 1973

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SPECIAL LIMITATIONS

SEC. 404. [42 U.S.C. 5044]

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(g)(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under title I of this Act who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 93-113.]

P.L. 93-134, Approved October 19, 1973 (87 Stat. 466)
Indian Tribal Judgment Funds Use or Distribution Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [25 U.S.C. 1401] (a) That, notwithstanding any other law, all use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the United States Claims Court in favor of any Indian tribe, band, group, pueblo, or community (hereinafter referred to as "Indian tribe"), together with any investment income earned thereon, after payment of attorney fees and litigation expenses, shall be made pursuant to the provisions of this Act.

(b) Except as provided in the Act of September 22, 1961 (75 Stat. 584), amounts which the Secretary of the Interior has remaining after execution of either a plan under this Act, or another Act enacted heretofore or hereafter providing for the use or distribution of amounts awarded in satisfaction of a judgment in favor of an Indian tribe or tribes, together with any investment income earned thereon and after payment of attorney fees and litigation expenses, shall be held in trust by the Secretary for the tribe or tribes involved if the plan or Act does not otherwise provide for the use of such amounts.

(c) This Act may be cited as the "Indian Tribal Judgment Funds Use or Distribution Act".

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SEC. 7. [25 U.S.C. 1407] None of the funds which—

(1) are distributed per capita or held in trust pursuant to a plan approved under the provisions of this Act, or

(2) on the date of enactment of this Act, are to be distributed per capita or are held in trust pursuant to a plan approved by the Congress prior to the date of enactment of this Act, or

(3) were distributed pursuant to a plan approved by Congress after December 31, 1981 but prior to the date of enactment of this Act, and any purchases made with such funds,

including all interest and investment income accrued thereon while such funds are so held in trust, shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

SEC. 8. [25 U.S.C. 1408] Interests of individual Indians in trust or restricted lands shall not be considered a resource in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 93-134. P.L. 98-64, §2(a), has a footnote referring to P.L. 93-134.]

P.L. 93-233, Approved December 31, 1973 (87 Stat. 947)
[Social Security Benefits—Increase]

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Eligibility of Supplemental Security Income Recipients for Food Stamps

SEC. 8.

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(d) [42 U.S.C. 1382e note] Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c), that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

(2) such State continues without interruption to meet the requirements of section 1618 of such Act for each month after the month referred to in paragraph

(1) and up to and including the month for which the Secretary is making the determination.

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Medicaid Eligibility for Individuals Receiving Mandatory State Supplementary Payments

SEC. 13.

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(c) [42 U.S.C. 1396a note] In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare under section 212(a) of Public Law 93-66, and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a), and

(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act.

Federal matching under title XIX of the Social Security Act shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.

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[*Internal References.*—S.S. Act §1927(a) cites P.L. 93-233. S.S. Act §1902 catchline has a footnote referring to P.L. 93-233. P.L. 92-603, §401 catchline has a footnote referring to P.L. 93-233.]

P.L. 93-288, Approved May 22, 1974 (88 Stat. 143)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act.

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SEC. 312. [42 U.S.C. 5155] DUPLICATION OF BENEFITS.

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(d) ASSISTANCE NOT INCOME.—Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

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[*Internal References.*—S.S. Act §1612(a) and (b) cites the Disaster Relief and Emergency Assistance Act and S.S. Act titles IV, part B and XVIII and §§428, 1612(b) and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 93-288.]

P.L. 93-344, Approved July 12, 1974 (88 Stat. 297)

Congressional Budget and Impoundment Control Act of 1974

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SEC. 3. [2 U.S.C. 622] For purposes of this Act—

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(2) BUDGET AUTHORITY AND NEW BUDGET AUTHORITY.—

(A) IN GENERAL.—The term "budget authority" means the authority provided by Federal law to incur financial obligations, as follows:

(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

(B) LIMITATIONS ON BUDGET AUTHORITY.—With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

(C) NEW BUDGET AUTHORITY.—The term "new budget authority" means, with respect to a fiscal year—

(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year s[1] a result of a reappropriation; or

(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.[2]

* * * * * * *

SEC. 301. [2 U.S.C. 632] (a) CONTENT OF CONCURRENT RESOLUTION ON THE BUDGET.—On or before April 15 of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two ensuing fiscal years, for the following—

(1) totals of new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit in the budget;

(4) new budget authority, budget outlays, direct loan obligations, and primary loan guarantee commitments for each major functional category, based on allocations of the total levels set forth pursuant to paragraph (1);[3]

(5) the public debt;[4]

(6) For[5] purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and[6]

(7) For[7] purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.[8]

The concurrent resolution shall not include the outlays and revenue totals of the old age[9], survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in any other surplus or deficit totals required by this title.[10]

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[1] As in original; possibly should be "as".

[2] P.L. 101-508, §13211(a), amended paragraph (2) in its entirety.

[3] P.L. 101-508, §13303(a), struck out "and".

[4] P.L. 101-508, §13303(a), struck out the period and substituted a semicolon.

[5] As in original; possibly should be "for".

[6] P.L. 101-508, §13303(a), added paragraph (6).

[7] As in original; possibly should be "for".

[8] P.L. 101-508, §13303(a), added paragraph (7).

[9] As in original; possibly should be "old-age".

[10] P.L. 101-508, §13301(b), added this sentence.

* * * * * * *

(i) It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported to the Senate that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.[11]

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Sec. 310. [2 U.S.C. 641] (a) Inclusion of Reconciliation Directives in Concurrent Resolutions on the Budget.—* * *

* * * * * * *

(g) Limitation on Changes to the Social Security Act.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a joint resolution pursuant[12] section 258C[13] of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II of the Social Security Act.

Sec. 311. [2 U.S.C. 642] (a)(1)[14] Legislation Subject to Point of Order.—* * *

* * * * * * *

(2)(A) After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority or total budget outlays or social security outlays set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues) set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

(B) In applying this paragraph—

(i)(I) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security[15] revenues specified in the most recently agreed to concurrent resolution on the budget;

(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

(ii)(I) estimated Social Security[16] outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security[17] revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

(II) estimated social security revenues shall be deemed to be reduced by the excess of estimated social security outlays (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

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[11] P.L. 101-508, §13303(b), amended subsection (i) in its entirety.
[12] P.L. 101-508, §13112(a)(9), struck out "resolution pursuant" and substituted "joint resolution pursuant".
[13] P.L. 101-508, §13112(a)(9), struck out "254(b)" and substituted "258C".
[14] P.L. 101-508, §13303(d)(1), redesignated subsection (a) as subsection (a)(1).
[15] As in original; possibly should be "social security".
[16] As in original; possibly should be "social security".
[17] As in original; possibly should be "social security".

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b).[18]

[*Internal Reference.*—S.S. Act §710(a) has a footnote referring to P.L. 93-344.]

P.L. 93-406, Approved September 2, 1974 (88 Stat. 829)

Employee Retirement Income Security Act of 1974

* * * * * * *

DEFINITIONS

SEC. 3. [29 U.S.C. 1002] For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this Act providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this title, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this Act applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

* * * * * * *

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

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[18] P.L. 101-508, §13303(d)(2), added paragraph (2).

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.[1]

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account. Any person who is a party in interest with respect to a plan to which a trust described in section 501(c)(22) of the Internal Revenue Code of 1986[2] is permitted to make payments under section 4223 shall be treated as a party in interest with respect to such trust.

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SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. [29 U.S.C. 1322]

* * * * * * *

(b)

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(3) The amount of monthly benefits described in subsection (a) provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing 1/12 of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

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[*Internal References.*—S.S. Act §§209(a) and 1106(c) cite the Employee Retirement Income Security Act of 1974 and §230(d) cites Public Law 93-406.]

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[1] As in original. Probably should be a comma.

[2] P.L. 101-239, §7891(a)(1), struck out "1954" and substituted "1986".

P.L. 93-579, Approved December 31, 1974 (88 Stat. 1896)
Privacy Act of 1974

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Sec. 7. [5 U.S.C. 552a note] (a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the[1] provisions of paragraph (1) of this subsection shall not apply with respect to—

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

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[*Internal Reference.*—S.S. Act §205(c) cites the Privacy Act of 1974.]

P.L. 93-618, Approved January 3, 1975 (88 Stat. 1978)
Trade Act of 1974

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PETITIONS

Sec. 221. [19 U.S.C. 2271] (a) A petition for a certification of eligibility to apply for adjustment assistance under this chapter may be filed with the Secretary of Labor (hereinafter in this chapter referred to as the "Secretary") by a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) or by their certified or recognized union or other duly authorized representative. Upon receipt of the petition, the Secretary shall promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

(b) If the petitioner, or any other person found by the Secretary to have a substantial interest in the proceedings, submits not later than 10 days after the date of the Secretary's publication under subsection (a) a request for a hearing, the Secretary shall provide for a public hearing and afford such interested persons an opportunity to be present, to produce evidence, and to be heard.

GROUP ELIGIBILITY REQUIREMENTS

Sec. 222. [19 U.S.C. 2272] (a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if he determines—

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) increases of imports of articles like or directly competitive with articles—

(A) which are produced by such workers' firm or appropriate subdivision thereof, or

(B) for which such workers' firm, or appropriate subdivision thereof, provides essential goods or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

(b) For purposes of subsection (a)(3)—

(1) The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

(2)(A) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas shall be considered to be a firm producing oil or natural gas.

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[1] As in original. Probably should be "The".

(B) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, shall be considered to be producing articles directly competitive with imports of oil and with imports of natural gas.

DETERMINATIONS BY SECRETARY OF LABOR

SEC. 223. [19 U.S.C. 2273] (a) As soon as possible after the date on which a petition is filed under section 221, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 222 and shall issue a certification of eligibility to apply for assistance under this chapter covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 231 occurred—

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this chapter.

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 222, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

STUDY BY SECRETARY OF LABOR WHEN INTERNATIONAL TRADE COMMISSION BEGINS INVESTIGATION

SEC. 224. [19 U.S.C. 2274] (a) Whenever the International Trade Commission (hereafter referred to in this chapter as the "Commission") begins an investigation under section 202 with respect to an industry, the Commission shall immediately notify the Secretary of such investigation, and the Secretary shall immediately begin a study of—

(1) the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, and

(2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs.

(b) The report of the Secretary of the study under subsection (a) shall be made to the President not later than 15 days after the day on which the Commission makes its report under section 202(f). Upon making his report to the President, the Secretary shall also promptly make it public (with the exception of information which the Secretary determines to be confidential) and shall have a summary of it published in the Federal Register.

BENEFIT INFORMATION TO WORKERS

SEC. 225. [19 U.S.C. 2275] (a) The Secretary shall provide full information to workers about the benefit allowances, training, and other employment services available under this chapter and about the petition and application procedures, and the appropriate filing dates, for such allowances, training and services. The Secretary shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The Secretary shall make every effort to insure that cooperating State agencies fully comply with the agreements entered into under section 239(a) and shall periodically review such compliance. The Secretary shall inform the State Board for Vocational Education or equivalent agency and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under section 223 and of projections, if available, of the needs for training under section 236 as a result of such certification.

(b)(1) The Secretary shall provide written notice through the mail of the benefits available under this chapter to each worker whom the Secretary has reason to believe is covered by a certification made under subchapter A of this chapter—

(A) at the time such certification is made, if the worker was partially or totally separated from the adversely affected employment before such certification, or

(B) at the time of the total or partial separation of the worker from the adversely affected employment, if subparagraph (A) does not apply.

(2) The Secretary shall publish notice of the benefits available under this chapter to workers covered by each certification made under subchapter A in newspapers of general circulation in the areas in which such workers reside.

QUALIFYING REQUIREMENTS FOR WORKERS

SEC. 231. [19 U.S.C. 2291] (a) Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins more than 60 days after the date on which the petition that resulted in such certification was filed under section 221, if the following conditions are met:

(1) Such worker's total or partial separation before his application under this chapter occurred—

(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment,

(B) before the expiration of the 2-year period beginning on the date on which the determination under section 223 was made, and

(C) before the termination date (if any) determined pursuant to section 223(d).

(2) Such worker had, in the 52-week period ending with the week in which such total or partial separation occurred, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment with a firm are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary. For the purposes of this paragraph, any week in which such worker—

(A) is on employer-authorized leave for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training,

(B) does not work because of a disability that is compensable under a workmen's compensation law or plan of a State or the United States, or

(C) had his employment interrupted in order to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more, but not more than 7 weeks, in case of weeks described in paragraph (A) or (C), or both, may be treated as weeks of employment under this sentence.

(3) Such worker—

(A) was entitled to (or would be entitled to if he applied therefor) unemployment insurance for a week within the benefit period (i) in which such total or partial separation took place, or (ii) which began (or would have begun) by reason of the filing of a claim for unemployment insurance by such worker after such total or partial separation;

(B) has exhausted all rights to any unemployment insurance to which he was entitled (or would be entitled if he applied therefor); and

(C) does not have an unexpired waiting period applicable to him for any such unemployment insurance.

(4) Such worker, with respect to such week of unemployment, would not be disqualified for extended compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970 by reason of the work acceptance and job search requirements in section 202(a)(3) of such Act.

(5) Such worker—

(A) is enrolled in a training program approved by the Secretary under section 236(a),

(B) has, after the date on which the worker became totally separated, or partially separated, from the adversely affected employment, completed a training program approved by the Secretary under section 236(a), or

(C) has received a written statement certified under subsection (c)(1) after the date described in subparagraph (B).

(b)(1) If—

(A) the Secretary determines that—

(i) the adversely affected worker—

(I) has failed to begin participation in the training program the enrollment in which meets the requirement of subsection (a)(5), or

(II) has ceased to participate in such training program before completing such training program, and

(ii) there is no justifiable cause for such failure or cessation, or

(B) the certification made with respect to such worker under subsection (c)(1) is revoked under subsection (c)(2),

no trade readjustment allowance may be paid to the adversely affected worker under this part for the week in which such failure, cessation, or revocation occurred, or any succeeding week, until the adversely affected worker begins or resumes participation in a training program approved under section 236(a).

(2) The provisions of subsection (a)(5) and paragraph (1) shall not apply with respect to any week of unemployment which begins—

(A) after the date that is 60 days after the date on which the petition that results in the certification that covers the worker is filed under section 221, and

(B) before the first week following the week in which such certification is made under subchapter (A)[1].

(c)(1)(A) If the Secretary finds that it is not feasible or appropriate to approve a training program for a worker under section 236(a), the Secretary shall submit to such worker a written statement certifying such finding.

(B) If a State or State agency has an agreement with the Secretary under section 239 and the State or State agency finds that it is not feasible or appropriate to approve a training program for a worker pursuant to the requirements of section 236(a), the State or State agency shall—

(i) submit to such worker a written statement certifying such finding, and

(ii) submit to the Secretary a written statement certifying such finding and the reasons for such finding.

(2)(A) If, after submitting to a worker a written statement certified under paragraph (1)(A), the Secretary finds that it is feasible or appropriate to approve a training program for such worker under section 236(a), the Secretary shall submit to such worker a written statement that revokes the certification made under paragraph (1)(A) with respect to such worker.

(B) If, after submitting to a worker a written statement certified under paragraph (1)(B), a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker, and to the Secretary, a written statement that revokes the certification made under paragraph (1)(B) with respect to such worker.

(3) The Secretary shall submit to the Finance Committee of the Senate and to the Ways and Means Committee of the House of Representatives an annual report on the number of workers who received certifications under paragraph (1) during the preceding year and the number of certifications made under paragraph (1) that were revoked during the preceding year.

WEEKLY AMOUNTS

Sec. 232. [19 U.S.C. 2292] (a) Subject to subsections (b) and (c), the trade readjustment allowance payable to an adversely affected worker for a week of total unemployment shall be an amount equal to the most recent weekly benefit amount of the unemployment insurance payable to the worker for a week of total unemployment preceding the worker's first exhaustion of unemployment insurance (as determined for purposes of section 231(a)(3)(B)) reduced (but not below zero) by—

(1) any training allowance deductible under subsection (c); and

(2) income that is deductible from unemployment insurance under the disqualifying income provisions of the applicable State law or Federal unemployment insurance law.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) If a training allowance under any Federal law other than this Act is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to any disqualification) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 233(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If such training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

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[1] As in original. Probably should be "A".

LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES

SEC. 233. [19 U.S.C. 2293](a)(1) The maximum amount of trade readjustment allowances payable with respect to the period covered by any certification to an adversely affected worker shall be the amount which is the product of 52 multiplied by the trade readjustment allowance payable to the worker for a week of total unemployment (as determined under section 232(a)), but such product shall be reduced by the total sum of the unemployment insurance to which the worker was entitled (or would have been entitled if he had applied therefor) in the worker's first benefit period described in section 231(a)(3)(A).

(2) A trade readjustment allowance shall not be paid for any week occurring after the close of the 104-week period that begins with the first week following the week in which the adversely affected worker was most recently totally separated from adversely affected employment—

(A) within the period which is described in section 231(a)(1), and

(B) with respect to which the worker meets the requirements of section 231(a)(2).[2]

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is participating in such training.

(b) A trade readjustment allowance may not be paid for an additional week specified in subsection (a)(3) if the adversely affected worker who would receive such allowance did not make a bona fide application to a training program approved by the Secretary under section 236 within 210 days after the date of the worker's first certification of eligibility to apply for adjustment assistance issued by the Secretary, or, if later, within 210 days after the date of the worker's total or partial separation referred to in section 231(a)(1).

(c) Amounts payable to an adversely affected worker under this part shall be subject to such adjustment on a week-to-week basis as may be required by section 232(b).

(d) Notwithstanding any other provision of this Act or other Federal law, if the benefit year of a worker ends within an extended benefit period, the number of weeks of extended benefits that such worker would, but for this subsection, be entitled to in that extended benefit period shall be reduced (but not below zero) by the number of weeks for which the worker was entitled, during such benefit year, to trade readjustment allowances under this part. For purposes of this paragraph, the terms "benefit year" and "extended benefit period" shall have the same respective meanings given to them in the Federal-State Extended Unemployment Compensation Act of 1970.

(e) No trade readjustment allowance shall be paid to a worker under this part for any week during which the worker is receiving on-the-job training.

(f) For purposes of this chapter, a worker shall be treated as participating in training during any week which is part of a break in training that does not exceed 14 days if—

(1) the worker was participating in a training program approved under section 236(a) before the beginning of such break in training, and

(2) the break is provided under such training program.

APPLICATION OF STATE LAWS

SEC. 234. [19 U.S.C. 2294] Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary may prescribe, the availability and disqualification provisions of the State law—

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[2] Alignment as in original.

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

PART II—TRAINING, OTHER EMPLOYMENT SERVICES, AND ALLOWANCES

EMPLOYMENT SERVICES

SEC. 235. [19 U.S.C. 2295] The Secretary shall make every reasonable effort to secure for adversely affected workers covered by a certification under subchapter A of this chapter counseling, testing, and placement services, and supportive and other services, provided for under any other Federal law. The Secretary shall, whenever appropriate, procure such services through agreements with the States.

TRAINING

SEC. 236. [19 U.S.C. 2296] (a)(1) If the Secretary determines that—

(A) there is no suitable employment (which may include technical and professional employment) available for an adversely affected worker,

(B) the worker would benefit from appropriate training,

(C) there is a reasonable expectation of employment following completion of such training,

(D) training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers)[3]

(E) the worker is qualified to undertake and complete such training, and

(F) such training is suitable for the worker and available at a reasonable cost,

the Secretary shall approve such training for the worker. Upon such approval, the worker shall be entitled to have payment of the costs of such training (subject to the limitations imposed by this section) paid on his behalf by the Secretary directly or through a voucher system. Insofar as possible, the Secretary shall provide or assure the provision of such training on the job, which shall include related education necessary for the acquisition of skills needed for a position within a particular occupation.

(2)(A) The total amount of payments that may be made under paragraph (1) for any fiscal year shall not exceed $120,000,000.

(B) If, during any fiscal year, the Secretary estimates that the amount of funds necessary to pay the costs of training approved under this section will exceed the amount of the limitation imposed under subparagraph (A), the Secretary shall decide how the portion of such limitation that has not been expended at the time of such estimate is to be apportioned among the States for the remainder of such fiscal year.

(3) For purposes of applying paragraph (1)(C), a reasonable expectation of employment does not require that employment opportunities for a worker be available, or offered, immediately upon the completion of training approved under this paragraph (1).

(4)(A) If the costs of training an adversely affected worker are paid by the Secretary under paragraph (1), no other payment for such costs may be made under any other provision of Federal law.

(B) No payment may be made under paragraph (1) of the costs of training an adversely affected worker if such costs—

(i) have already been paid under any other provision of Federal law, or

(ii) are reimbursable under any other provision of Federal law and a portion of such costs have already been paid under such other provision of Federal law.

(C) The provisions of this paragraph shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the costs incurred in training a particular adversely affected worker, even if such use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(5) The training programs that may be approved under paragraph (1) include, but are not limited to—

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[3] As in original; probably should insert a comma.

(A) on-the-job training,

(B) any training program provided by a State pursuant to section 303 of the Job Training Partnership Act,

(C) any training program approved by a private industry council established under section 102 of such Act,

(D) any program of remedial education,

(E) any training program (other than a training program described in paragraph (7)) for which all, or any portion, of the costs of training the worker are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section, and[4]

(F) any other training program approved by the Secretary.

(6)(A) The Secretary is not required under paragraph (1) to pay the costs of any training approved under paragraph (1) to the extent that such costs are paid—

(i) under any Federal or State program other than this chapter, or

(ii) from any source other than this section.

(B) Before approving any training to which subparagraph (A) may apply, the Secretary may require that the adversely affected worker enter into an agreement with the Secretary under which the Secretary will not be required to pay under this section the portion of the costs of such training that the worker has reason to believe will be paid under the program, or by the source, described in clause (i) or (ii) of subparagraph (A).[5]

(7) The Secretary shall not approve a training program if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.[6]

(8) The Secretary may approve training for any adversely affected worker who is a member of a group certified under subchapter A at any time after the date on which the group is certified under subchapter A, without regard to whether such worker has exhausted all rights to any unemployment insurance to which the worker is entitled.[7]

(9) The Secretary shall prescribe regulations which set forth the criteria under each of the subparagraphs of paragraph (1) that will be used as the basis for making determinations under paragraph (1).[8]

(b) The Secretary may, where appropriate, authorize supplemental assistance necessary to defray reasonable transportation and subsistence expenses for separate maintenance when training is provided in facilities which are not within commuting distance of a worker's regular place of residence. The Secretary may not authorize—

(1) payments for subsistence that exceed whichever is the lesser of (A) the actual per diem expenses for subsistence, or (B) payments at 50 percent of the prevailing per diem allowance rate authorized under the Federal travel regulations, or

(2) payments for travel expenses exceeding the prevailing mileage rate authorized under the Federal travel regulations.

(c) The Secretary shall pay the costs of any on-the-job training of an adversely affected worker that is approved under subsection (a)(1) in equal monthly installments, but the Secretary may pay such costs, notwithstanding any other provision of this section, only if—

(1) no currently employed worker is displaced by such adversely affected worker (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits),

(2) such training does not impair existing contracts for services or collective bargaining agreements,

(3) in the case of training which would be inconsistent with the terms of a collective bargaining agreement, the written concurrence of the labor organization concerned has been obtained,

(4) no other individual is on layoff from the same, or any substantially equivalent, job for which such adversely affected worker is being trained,

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[4] Alignment as in original.
[5] Alignment as in original.
[6] Alignment as in original.
[7] Alignment as in original.
[8] Alignment as in original.

(5) the employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created by hiring such adversely affected worker,

(6) the job for which such adversely affected worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals,

(7) such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222,

(8) the employer certifies to the Secretary that the employer will continue to employ such worker for at least 26 weeks after completion of such training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment,

(9) the employer has not received payment under subsection (a)(1) with respect to any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (1), (2), (3), (4), (5), and (6), and

(10) the employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (8) made by such employer with respect to any other on-the-job training provided by such employer for which the Secretary has made a payment under subsection (a)(1).

(d) A worker may not be determined to be ineligible or disqualified for unemployment insurance or program benefits under this subchapter because the individual is in training approved under subsection (a), because of leaving work which is not suitable employment to enter such training, or because of the application to any such week in training of provisions of State law or Federal unemployment insurance law relating to availability for work, active search for work, or refusal to accept work. The Secretary shall submit to the Congress a quarterly report regarding the amount of funds expended during the quarter concerned to provide training under subsection (a) and the anticipated demand for such funds for any remaining quarters in the fiscal year concerned.

(e) For purposes of this section the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less than 80 percent of the worker's average weekly wage.

JOB SEARCH ALLOWANCES

SEC. 237. [19 U.S.C. 2297] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

(2) reimbursement may not be made for subsistence and transportation expenses at levels exceeding those allowable under section 236(b)(1) and (2).

(b) A job search allowance may be granted only—

(1) to assist an adversely affected worker who has been totally separated in securing a job within the United States;

(2) where the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides; and

(3) where the worker has filed an application for such allowance with the Secretary before—

(A) the later of—

(i) the 365th day after the date of the certification under which the worker is eligible, or

(ii) the 365th day after the date of the worker's last total separation; or

(B) the 182d day after the concluding date of any training received by the worker, if the worker was referred to such training by the Secretary.

(c) The Secretary shall reimburse any adversely affected worker for necessary expenses incurred by such worker in participating in a job search program approved by the Secretary.

RELOCATION ALLOWANCES

SEC. 238. [19 U.S.C. 2298] (a) Any adversely affected worker covered by a certification under subchapter A of this chapter may file an application with the Secretary for a relocation allowance, subject to the terms and conditions of this section, if such worker files such application before—

(1) the later of—

(A) the 425th day after the date of the certification, or

(B) the 425th day after the date of the worker's last total separation; or

(2) the 182d day after the concluding date of any training received by such worker, if the worker was referred to such training by the Secretary.

(b) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bona fide offer of such employment, and

(3) is totally separated from employment at the time relocation commences.

(c) A relocation allowance shall not be granted to such worker unless his relocation occurs within 182 days after the filing of the application therefor or (in the case of a worker who has been referred to training by the Secretary) within 182 days after the conclusion of such training.

(d) For the purposes of this section, the term "relocation allowance" means—

(1) 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b)(1) and (2)) specified in regulations prescribed by the Secretary, incurred in transporting a worker and his family, if any, and household effects, and

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

SUBCHAPTER C—GENERAL PROVISIONS

AGREEMENTS WITH STATES

SEC. 239. [19 U.S.C. 2311] (a) The Secretary is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency (referred to in this subchapter as "cooperating States" and "cooperating States agencies" respectively). Under such an agreement, the cooperating State agency (1) as agent of the United States, will receive applications for, and will provide, payments on the basis provided in this chapter, (2) where appropriate, but in accordance with subsection (f), will afford adversely affected workers testing, counseling, referral to training and job search programs, and placement services, (3) will make any certifications required under section 231(c)(2), and (4) will otherwise cooperate with the Secretary and with other State and Federal agencies in providing payments and services under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to payments under this chapter.

(d) A determination by a cooperating State agency with respect to entitlement to program benefits under an agreement is subject to review in the same manner and to the same extent as determinations under the applicable State law and only in that manner and to that extent.

(e) Any agreement entered into under this section shall provide for the coordination of the administration of the provisions for employment services, training, and supplemental assistance under sections 235 and 236 of this Act and under title III of the Job Training Partnership Act upon such terms and conditions as are established by the Secretary in consultation with the States and set forth in such agreement. Any agency of the State jointly administering such provisions under such agreement shall be considered to be a cooperating State agency for purposes of this chapter.

(f) Each cooperating State agency shall, in carrying out subsection (a)(2)—

(1) advise each worker who applies for unemployment insurance of the benefits under this chapter and the procedures and deadlines for applying for such benefits,

(2) facilitate the early filing of petitions under section 221 for any workers that the agency considers are likely to be eligible for benefits under this chapter,

(3) advise each adversely affected worker to apply for training under section 236(a) before, or at the same time, the worker applies for trade readjustment allowances under part I of subchapter B, and

(4) as soon as practicable, interview the adversely affected worker regarding suitable training opportunities available to the worker under section 236 and review such opportunities with the worker.

ADMINISTRATION ABSENT STATE AGREEMENT

SEC. 240. [19 U.S.C. 2312] (a) In any State where there is no agreement in force between a State or its agency under section 239, the Secretary shall arrange under regulations prescribed by him for performance of all necessary functions under subchapter B of this chapter, including provision for a fair hearing for any worker whose application for payments is denied.

(b) A final determination under subsection (a) with respect to entitlement to program benefits under subchapter B of this chapter is subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. sec. 405(g)).

PAYMENTS TO STATES

SEC. 241. [19 U.S.C. 2313] (a) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each cooperating State the sums necessary to enable such State as agent of the United States to make payments provided for by this chapter.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Secretary of the Treasury.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS

SEC. 242. [19 U.S.C. 2314] (a) No person designated by the Secretary, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

FRAUD AND RECOVERY OF OVERPAYMENTS

SEC. 243. [19 U.S.C. 2315] (a)(1) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that any person has received any payment under this chapter to which the person was not entitled, including a payment referred to in subsection (b), such person shall be liable to repay such amount to the State agency or the Secretary, as the case may be, except that the State agency or the Secretary may waive such repayment if such agency or the Secretary determines, in accordance with guidelines prescribed by the Secretary, that—

(A) the payment was made without fault on the part of such individual, and

(B) requiring such repayment would be contrary to equity and good conscience.

(2) Unless an overpayment is otherwise recovered, or waived under paragraph (1), the State agency or the Secretary shall recover the overpayment by deductions from any sums payable to such person under this chapter, under any Federal unemployment compensation law administered by the State agency or the Secretary, or under any other Federal law administered by the State agency or the Secretary which provides for the payment of assistance or an allowance with respect to unemployment, and, notwithstanding any other provision of State law or Federal law to the contrary, the Secretary may require the State agency to recover any overpayment under this chapter by deduction from any unemployment insurance payable to such person under the State law, except that no single deduction under this paragraph shall exceed 50 percent of the amount otherwise payable.

(b) If a cooperating State agency, the Secretary, or a court of competent jurisdiction determines that an individual—

(1) knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) knowingly has failed, or caused another to fail, to disclose a material fact,

and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this chapter to which the individual was not entitled, such individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this chapter.

(c) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under subsection (a)(1) by the State agency or the Secretary, as the case may be, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the individual concerned, and the determination has become final.

(d) Any amount recovered under this section shall be returned to the Treasury of the United States.

PENALTIES

SEC. 244. [19 U.S.C. 2316] Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment authorized to be furnished under this chapter or pursuant to an agreement under section 239 shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

AUTHORIZATION OF APPROPRIATIONS

SEC. 245. [19 U.S.C. 2317] There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1988, 1989, 1990, 1991, 1992, and 1993, such sums as may be necessary to carry out the purposes of this chapter.

SEC. 246. [19 U.S.C. 2318] **SUPPLEMENTAL WAGE ALLOWANCE DEMONSTRATION PROJECTS.**

(a) The Secretary shall establish [9] one or more demonstration projects during fiscal years 1989 and 1990 for the purpose of—

(1) determining the attractiveness of a supplemental wage allowance to various categories of workers eligible for assistance under this chapter, based on the amount and duration of the supplement;

(2) determining the effectiveness of a supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers; and

(3) determining whether a supplemental wage allowance should be made an option under the Trade Adjustment Assistance program for all fiscal years.

(b)(1) For purposes of this section, the term "supplemental wage allowance" means a payment that is made to an adversely affected worker who—

(A) accepts full-time employment at an average weekly wage that is less than the average weekly wage of the worker in the adversely affected employment,

(B) prior to such acceptance, is eligible for trade readjustment allowances under part I of subchapter B, and

(C) voluntarily elects to receive such payment in lieu of any trade readjustment allowances that the worker would otherwise be eligible to receive with respect to the period covered by the certification made under subchapter A that applies to such worker.

(2) A supplemental wage allowance shall be provided under any demonstration project established under subsection (a) to a worker described in paragraph (1) for each week during which the worker performs services in the full-time employment referred to in paragraph (1)(A) in an amount that does not exceed the lesser of—

(A) the amount of the trade readjustment allowance that the worker would have been eligible to receive for any week under part 1[10] of subchapter B if the worker had not accepted the full-time employment and had not made the election described in paragraph (1)(C), or

(B) the excess of—

(i) an amount equal to 80 percent of the average weekly wage of the worker in the adversely affected employment, over

(ii) the average weekly wage in the full-time employment.

(3)(A) Supplemental wage allowances shall not be provided under any demonstration project established under subsection (a) for more than 52 weeks.

(B) The total amount of supplemental wage allowances that may be paid to any worker under any demonstration project established under subsection (a) with respect to the period covered by the certification applicable to such worker shall not exceed an amount that is equal to the excess of—

(i) the amount of the limitation imposed under section 233(a)(1) with respect to such worker for such period, over

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[9] P.L. 101-382, §136(1), struck out "and carry out".

[10] As in original. Probably should be "I".

(ii) the amount of the trade readjustment allowances paid under part I of subchapter B to such worker for such period.

(c) The Secretary shall provide for an evaluation of demonstration projects conducted under this section to determine at least the following:

(1) the extent to which different age groups of eligible recipients utilize the supplemental wage allowance;

(2) the effect of the amount and duration of the supplemental wage allowance on the utilization of the allowance;

(3) the extent to which the supplemental wage allowance affects the demand for training and the appropriateness thereof;

(4) the extent to which the supplemental wage allowance facilitates the readjustment of workers who would not otherwise utilize benefits provided under this chapter;

(5) the extent to which the allowance affects the cost of carrying out the provisions of this chapter; and

(6) the effectiveness of the supplemental wage allowance as an option under this chapter in facilitating the readjustment of adversely affected workers.

(d) By no later than the date that is 6 years[11] after the date of enactment of the Omnibus Trade and Competitiveness Act of 1988, the Secretary shall transmit to the Congress a report that includes—

(1) an evaluation of the projects authorized under this section that is conducted in accordance with subsection (c), and

(2) a recommendation as to whether the supplemental wage allowance should be available on a permanent basis as an option for some or all workers eligible for assistance under this chapter.

DEFINITIONS

SEC. 247. [19 U.S.C. 2319] For purposes of this chapter—

(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

(2) The term "adversely affected worker" means an individual who, because of lack of work in adversely affected employment—

(A) has been totally or partially separated from such employment, or

(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) Repealed.[12]]

(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary.

(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had—

(A) his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment, and

(B) his wages reduced to 80 percent or less of his average weekly wage in such adversely affected employment.

[(7) Repealed.[13]]

(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

(9) The term "State agency" means the agency of the State which administers the State law.

(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

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[11] P.L. 101-382, §136(2), struck out "3 years" and substituted "6 years".

[12] P.L. 97-35, §2511(1), 95 Stat. 888.

[13] P.L. 97-35, §2511(1), 95 Stat. 888.

(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

(12) The term "unemployment insurance" means the unemployment compensation payable to an individual under any State law or Federal unemployment compensation law, including chapter 85 of title 5, United States Code, and the Railroad Unemployment Insurance Act. The terms "regular compensation", "additional compensation", and "extended compensation" have the same respective meanings that are given them in section 205(2), (3), and (4) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(13) The term "week" means a week as defined in the applicable State law.

(14) The term "week of unemployment" means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal unemployment insurance law.

(15) The term "benefit period" means, with respect to an individual—

(A) the benefit year and any ensuing period, as determined under applicable State law, during which the individual is eligible for regular compensation, additional compensation, or extended compensation, or

(B) the equivalent to such a benefit year or ensuing period provided for under the applicable Federal unemployment insurance law.

(16) The term "on-the-job training" means training provided by an employer to an individual who is employed by the employer.

(17)(A) The term "job search program" means a job search workshop or job finding club.

(B) The term "job search workshop" means a short (1 to 3 days) seminar designed to provide participants with knowledge that will enable the participants to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

(C) The term "job finding club" means a job search workshop which includes a period (1 to 2 weeks) of structured, supervised activity in which participants attempt to obtain jobs.

REGULATIONS

Sec. 248. [19 U.S.C. 2320] The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this chapter.

SUBPENA POWER

Sec. 249. [19 U.S.C. 2321] (a) The Secretary may require by subpena the attendance of witnesses and the production of evidence necessary for him to make a determination under the provisions of this chapter.

(b) If a person refuses to obey a subpena issued under subsection (a), a United States district court within the jurisdiction of which the relevant proceeding under this chapter is conducted may, upon petition by the Secretary, issue an order requiring compliance with such subpena.

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[*Internal Reference.*—S.S. Act title IX catchline has a footnote referring to P.L. 93-618.]

P.L. 93-638, Approved January 4, 1975 (88 Stat. 2203)
Indian Self-Determination and Education Assistance Act

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TITLE I—INDIAN SELF-DETERMINATION ACT

Sec. 101. [25 U.S.C. 450 note] This title may be cited as the "Indian Self-Determination Act".

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Sec. 104.

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(e) [25 U.S.C. 450i(a)] Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5, United States Code, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203), in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

* * * * * * *

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") or chapter 84 ("Federal Employees Retirement System") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

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[*Internal References.*—S.S. Act §§210(a) and 1920(b) cite the Indian Self-Determination Act and S.S. Act §482(i) cites Public Law 93-638.]

P.L. 94-114, Approved October 17, 1975 (89 Stat. 577)
[Indian Tribes—Submarginal Lands]

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SEC. 6. [25 U.S.C. 459e] All property conveyed to tribes pursuant to this Act and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income, resources, or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a); 1002(a); 1402(a); and 1602(a)(State) have footnotes referring to P.L. 94-114.]

P.L. 94-135, Approved November 28, 1975 (89 Stat. 713)
Older Americans Amendments of 1975

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SHORT TITLE

SEC. 301. [42 U.S.C. 6101 note] The provisions of this title may be cited as the "Age Discrimination Act of 1975".

STATEMENT OF PURPOSE

SEC. 302. [42 U.S.C. 6101] It is the purpose of this title to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

PROHIBITION OF DISCRIMINATION

SEC. 303. [42 U.S.C. 6102] Pursuant to regulations prescribed under section 304, and except as provided by section 304(b) and section 304(c), no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

REGULATIONS

SEC. 304. [42 U.S.C. 6103] * * *

(b)(1) It shall not be a violation of any provision of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c)(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974[1] (29 U.S.C. 801, et seq.), as amended, nothing in this title shall be construed to authorize action under this title by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this title shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

ENFORCEMENT

SEC. 305. [42 U.S.C. 6104] (a) The head of any Federal department or agency who prescribes regulations under section 304 may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1). Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 304 withholds funds pursuant to subsection (a), he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 304.

(c) No action may be taken under subsection (a) until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) In the case of any action taken under subsection (a), the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

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[1] P.L. 97-300, §183, deemed this reference to be to the Job Training Partnership Act.

(e)(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education, and Welfare, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) With respect to actions brought for relief based on an alleged violation of the provisions of this title, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

JUDICIAL REVIEW

Sec. 306. [42 U.S.C. 6105] (a) Any action by any Federal department or agency under section 305 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency on other grounds.

(b) In the case of any action by any Federal department or agency under section 305 which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5, United States Code. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

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REPORTS

Sec. 308. [42 U.S.C. 6106a] (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

DEFINITIONS

Sec. 309. [42 U.S.C. 6107] For purposes of this title—

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health, Education, and Welfare;

(3) the term "Federal department or agency" means any agency as defined in section 551 of title 5, United States Code, and includes the United States Postal Service and the Postal Rate Commission; and

(4) the term "program or activity" means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other postsecondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 198(a)(10), of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.

[*Internal Reference.*—S.S. Act §508(a) and (b) cites the Age Discrimination Act of 1975.]

P.L. 94-202, Approved January 2, 1976 (89 Stat. 1135)
[Social Security—Hearings and Review Procedures]

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Sec. 8.

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(e) [42 U.S.C. 401 note] Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(f) [42 U.S.C. 401 note] The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare specified in section 232 of such Act, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

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[*Internal Reference.*—S.S. Act §201(g) has a footnote referring to P.L. 94-202.]

P.L. 94-375, Approved August 3, 1976 (90 Stat. 1067)
Housing Authorization Act of 1976

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Sec. 2.

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(h) [42 U.S.C. 1382 note] Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937, the National Housing Act, section 101 of the Housing and Urban Development Act of 1965, or title V of the Housing Act of 1949 may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act. This subsection shall become effective on October 1, 1976.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines have a footnote referring to P.L. 94-375. P.L. 73-479, P.L. 81-171, and P.L. 89-117 catchlines have footnotes referring to P.L. 94-375.]

P.L. 94-437, Approved September 30, 1976 (90 Stat. 1400)

Indian Health Care Improvement Act

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DEFINITIONS

SEC. 4. [25 U.S.C. 1603] For purposes of this Act—

(a) "Secretary", unless otherwise designated, means the Secretary of Health and Human Services.

(b) "Service" means the Indian Health Service.

(c) "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 102, 103, and 201(c)(5), such terms shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(d) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) "Tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(f) "Urban Indian" means any individual who resides in an urban center, as defined in subsection (g) hereof, and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.

(g) "Urban center" means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under title V, as determined by the Secretary.

(h) "Urban Indian organization" means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

(i) "Area office" means an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

(j) "Service unit" means—

(1) an administrative entity within the Indian Health Service, or

(2) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination Act,

through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

(k) "Health promotion" includes—

(1) cessation of tobacco smoking,
(2) reduction in the misuse of alcohol and drugs,
(3) improvement of nutrition,
(4) improvement in physical fitness,
(5) family planning,
(6) control of stress, and
(7) pregnancy and infant care (including prevention of fetal alcohol syndrome).

(l) "Disease prevention" includes—

(1) immunizations,
(2) control of high blood pressure,
(3) control of sexually transmittable diseases,
(4) prevention and control of diabetes,
(5) control of toxic agents,
(6) occupational safety and health,
(7) accident prevention,
(8) fluoridation of water, and
(9) control of infectious agents.

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INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM

SEC. 108. [25 U.S.C. 1616a]

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(l)(1) An individual who has entered into a written contract with the Secretary under this section and who—

(A) is enrolled in the final year of a course of study and who—

(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

(ii) voluntarily terminates such enrollment; or

(iii) is dismissed from such educational institution before completion of such course of study; or

(B) is enrolled in a graduate training program, fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

(2) If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A = 3Z(t\text{-}s/t)$$

in which—

(A) "A" is the amount the United States is entitled to recover;

(B) "Z" is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

(C) "t" is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

(D) "s" is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1892 of the Social Security Act.

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SEC. 401. * * *

(c) [42 U.S.C. 1395qq note] Any payments received for services provided to beneficiaries hereunder shall not be considered in determining appropriations for health care and services to Indians.

(d) [42 U.S.C. 1395qq note] Nothing herein authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

SEC. 402.

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(c) [42 U.S.C. 1396j note] Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, skilled nursing facility, or any other type of facility which provides services of a type otherwise covered under a State plan for medical assistance approved under title XIX of the Social Security Act) is entitled under such a State plan by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. In making payments from such fund, the Secretary shall ensure that each service unit of the Indian Health Service receives at least 50 percent of the amounts to which the facilities of the Indian Health Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act, if such amount is necessary for the purpose of making improvements in such facilities in order to achieve compliance with the conditions and requirements of title XIX of the Social Security Act. This subsection shall cease to apply when the Secretary determines and certifies that substantially all of the health facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) [42 U.S.C. 1396j note] Any payments received for services provided recipients hereunder shall not be considered in determining appropriations for the provision of health care and services to Indians.

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REPORT

SEC. 403. [25 U.S.C. 1671 note] The Secretary shall include in his annual report required by section 701 an accounting on the amount and use of funds made available to the Service pursuant to this title as a result of reimbursements through titles XVIII and XIX of the Social Security Act, as amended.

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DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS

SEC. 405. [42 U.S.C. 1395qq] (a) The Secretary shall establish a demonstration program under which Indian tribes, tribal organizations, and Alaska Native health organizations, which are contracting the entire operation of an entire hospital or clinic of the Service under the authority of the Indian Self-Determination Act, shall directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under title XVIII of the Social Security Act (medicare), under a State plan for medical assistance approved under title XIX of the Social Security Act (medicaid), or from any other third-party payor. The last sentence of section 1905(b) of the Social Security Act shall apply for purposes of the demonstration program.

(b)(1) Each hospital or clinic participating in the demonstration program described in subsection (a) shall be reimbursed directly under the medicare and medicaid programs for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act and sections 402(c) and 713(b)(2)(A) of this Act, but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under the medicare or medicaid program. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions or requirements shall be used—

(A) solely for improving the health resources deficiency level of the Indian tribe, and

(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act.

(2) The amounts paid to the hospitals and clinics participating in the demonstration program described in subsection (a) shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs.

(3) The Secretary shall monitor the performance of hospitals and clinics participating in the demonstration program described in subsection (a), and shall require such hospitals and clinics to submit reports on the program to the Secretary on a quarterly basis (or more frequently if the Secretary deems it to be necessary).

(4) Notwithstanding section 1880(c) of the Social Security Act or section 402(c) of this Act, no payment may be made out of the special fund described in section 1880(c) of the Social Security Act, or section 402(c) of this Act, for the benefit of any hospital or clinic participating in the demonstration program described in subsection (a) during the period of such participation.

(c)(1) In order to be considered for participation in the demonstration program described in subsection (a), a hospital or clinic must submit an application to the Secretary which establishes to the satisfaction of the Secretary that—

(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts the entire operation of the Service facility;

(B) the facility is eligible to participate in the medicare and medicaid programs under sections 1880 and 1911 of the Social Security Act;

(C) the facility meets any requirements which apply to programs operated directly by the Service; and

(D) the facility is accredited by the Joint Commission on Accreditation of Hospitals, or has submitted a plan, which has been approved by the Secretary, for achieving such accreditation prior to October 1, 1990.

(2) From among the qualified applicants, the Secretary shall, prior to October 1, 1989, select no more than 4 facilities to participate in the demonstration program described in subsection (a). The demonstration program described in subsection (a) shall begin by no later than October 1, 1991, and end on September 30, 1995.

(d)(1) Upon the enactment of the Indian Health Care Amendments of 1988, the Secretary, acting through the Service, shall commence an examination of—

(A) any administrative changes which may be necessary to allow direct billing and reimbursement under the demonstration program described in subsection (a), including any agreements with States which may be necessary to provide for such direct billing under the medicaid program; and

(B) any changes which may be necessary to enable participants in such demonstration program to provide to the Service medical records information on patients served under such demonstration program which is consistent with the medical records information system of the Service.

(2) Prior to the commencement of the demonstration program described in subsection (a), the Secretary shall implement all changes required as a result of the examinations conducted under paragraph (1).

(3) Prior to October 1, 1990, the Secretary shall determine any accounting information which a participant in the demonstration program described in subsection (a) would be required to report.

(e) The Secretary shall submit a final report at the end of fiscal year 1995, on the activities carried out under the demonstration program described in subsection (a) which shall include an evaluation of whether such activities have fulfilled the objectives of such program. In such report the Secretary shall provide a recommendation, based upon the results of such demonstration program, as to whether direct billing of, and reimbursement by, the medicare and medicaid programs and other third-party payors should be authorized for all Indian tribes and Alaska Native health organizations which are contracting the entire operation of a facility of the Service.

(f) The Secretary shall provide for the retrocession of any contract entered into between a participant in the demonstration program described in subsection (a) and the Service under the authority of the Indian Self-Determination Act. All cost accounting and billing authority shall be retroceded to the Secretary upon the Secretary's acceptance of a retroceded contract.

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TITLE V—HEALTH SERVICES FOR URBAN INDIANS

PURPOSE

SEC. 501. [25 U.S.C. 1651] The purpose of this title is to establish programs in urban centers to make health services more accessible to urban Indians.

CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

SEC. 502. [25 U.S.C. 1652] Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations to assist such organizations in the establishment and administration, within the urban centers in which such organizations are situated, of programs which meet the requirements set forth in this title. The Secretary, through the Service, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with any urban Indian organization pursuant to this title.

CONTRACTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES

SEC. 503. [25 U.S.C. 1653] (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, shall enter into contracts with urban Indian organizations for the provision of health care and referral services for urban Indians residing in the urban centers in which such organizations are situated. Any such contract shall include requirements that the urban Indian organization successfully undertake to—

(1) estimate the population of urban Indians residing in the urban center in which such organization is situated who are or could be recipients of health care or referral services;

(2) estimate the current health status of urban Indians residing in such urban center;

(3) estimate the current health care needs of urban Indians residing in such urban center;

(4) identify all public and private health services resources within such urban center which are or may be available to urban Indians;

(5) determine the use of public and private health services resources by the urban Indians residing in such urban center;

(6) assist such health services resources in providing services to urban Indians;

(7) assist urban Indians in becoming familiar with and utilizing such health services resources;

(8) provide basic health education, including health promotion and disease prevention education, to urban Indians;

(9) establish and implement training programs to accomplish the referral and education tasks set forth in paragraphs (6) through (8) of this subsection;

(10) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

(11) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

(12) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

(b) The Secretary, through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations to enter into contracts under this section. Such criteria shall, among other factors, include—

(1) the extent of unmet health care needs of urban Indians in the urban center involved;

(2) the size of the urban Indian population in the urban center involved;

(3) the accessibility to, and utilization of, health care services (other than services provided under this title) by urban Indians in the urban center involved;

(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate—

(A) any previous or current public or private health services project in an urban center that was or is funded in a manner other than pursuant to this title; or

(B) any project funded under this title;

(5) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary under this section;

(6) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

(7) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center; and

(8) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

(c)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, health promotion and disease prevention services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

(2) There is authorized to be appropriated $1,000,000 for fiscal year 1992 to carry out this subsection.[1]

(d)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, immunization services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

(2) In making any grant to carry out this subsection, the Secretary shall take into consideration—

(A) the size of the urban Indian population to be served;

(B) the immunization levels of the urban Indian population, particularly the immunization levels of infants, children, and the elderly;

(C) the utilization by the urban Indians of alternative resources from State and local governments for no-cost or low-cost immunization services to the general population; and

(D) the capability of the urban Indian organization to carry out services pursuant to this subsection.

(3) For purposes of this subsection, the term "immunization services" means services to provide without charge immunizations against vaccine-preventable diseases.

(4) There are authorized to be appropriated $1,000,000 for fiscal year 1992 to carry out this subsection.[2]

(e)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, mental health services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section.

(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment of the mental health needs of the urban Indian population concerned, the mental health services and other related resources available to that population, the barriers to obtaining those services and resources, and the needs that are unmet by such services and resources.

(3) Grants may be made under this subsection—

(A) to prepare assessments required under paragraph (2);

(B) to provide outreach, educational, and referral services to urban Indians regarding the availability of direct mental health services, to educate urban Indians about mental health issues and services, and effect coordination with existing mental health providers in order to improve services to urban Indians;

(C) to provide outpatient mental health services to urban Indians, including the identification and assessment of illness, therapeutic treatments, case management, support groups, family treatment, and other treatment; and

(D) to develop innovative mental health service delivery models which incorporate Indian cultural support systems and resources.

(4) There is authorized to be appropriated $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsection.[3]

(f)(1) The Secretary, acting through the Service, shall facilitate access to, or provide, services for urban Indians through grants to urban Indian organizations administering contracts entered into pursuant to this section to prevent and treat child abuse (including sexual abuse) among urban Indians.

(2) A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment that documents the prevalence of child abuse in the urban Indian population concerned and specifies the services and programs (which may not duplicate existing services and programs) for which the grant is requested.

(3) Grants may be made under this subsection—

(A) to prepare assessments required under paragraph (2);

(B) for the development of prevention, training, and education programs for urban Indian populations, including child education, parent education, provider training on identification and intervention, education on reporting requirements, prevention campaigns, and establishing service networks of all those involved in Indian child protection; and

(C) to provide direct outpatient treatment services (including individual treatment, family treatment, group therapy, and support groups) to urban Indians who are child victims of abuse (including sexual abuse) or adult survivors of child sexual abuse, to the families of such child victims, and to urban Indian perpetrators of child abuse (including sexual abuse);

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[1] P.L. 101-630, §505(a), added subsection (c).
[2] P.L. 101-630, §505(b), added subsection (d).
[3] P.L. 101-630, §505(c), added subsection (e).

(4) In making grants to carry out this subsection, the Secretary shall take into consideration—

(A) the support for the urban Indian organization demonstrated by the child protection authorities in the area, including committees or other services funded under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), if any;

(B) the capability and expertise demonstrated by the urban Indian organization to address the complex problem of child sexual abuse in the community; and

(C) the assessment required under paragraph (2).

(5) There is authorized to be appropriated $500,000 for fiscal year 1991 and $2,000,000 for fiscal year 1992 to carry out this subsection.[4]

CONTRACTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS

SEC. 504. [25 U.S.C. 1654] (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with urban Indian organizations situated in urban centers for which contracts have not been entered into under section 503. The purpose of a contract under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract under section 503 with the urban Indian organization with which the Secretary has entered into a contract under this section.

(b) Any contract entered into by the Secretary under this section shall include requirements that—

(1) the urban Indian organization successfully undertake to—

(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

(B) with respect to urban Indians in the urban center involved, determine the matters described in clauses (2), (3), (4), and (8) of section 503(b); and

(2) the urban Indian organization complete performance of the contract within one year after the date on which the Secretary and such organization enter into such contract.

(c) The Secretary may not renew any contract entered into under this section.

EVALUATIONS; CONTRACT RENEWALS

SEC. 505. [25 U.S.C. 1655] (a) The Secretary, through the Service, shall develop procedures to evaluate compliance with, and performance of contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

(b) The Secretary, through the Service, shall conduct an annual onsite evaluation of each urban Indian organization which has entered into a contract under section 503 for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract.

(c) If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract to prevent future occurrences of such noncompliance or unsatisfactory performance. If the Secretary determines that such noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract with such organization and is authorized to enter into a contract under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract is not renewed under this section.

(d) In determining whether to renew a contract with an urban Indian organization under section 503 which has completed performance of a contract under section 504, the Secretary shall review the records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract under section 503, shall consider the results of the onsite evaluations conducted under subsection (b).

OTHER CONTRACT REQUIREMENTS

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[4] P.L. 101-630, §505(d), added subsection (f).

SEC. 506. [25 U.S.C. 1656] (a) Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

(d) In connection with any contract entered into pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for the use and maintenance of such facilities.

(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

(f) Urban Indians, as defined in section 4(f) of this Act, shall be eligible for health care or referral services provided pursuant to this title.

REPORTS AND RECORDS

SEC. 507. [25 U.S.C. 1657] (a) For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into pursuant to this title, such organization shall submit to the Secretary a quarterly report including—

(1) in the case of a contract under section 503, information gathered pursuant to clauses (10) and (11) of subsection (a) of such section;

(2) information on activities conducted by the organization pursuant to the contract;

(3) an accounting of the amounts and purposes for which Federal funds were expended; and

(4) such other information as the Secretary may request.

(b) The reports and records of the urban Indian organization with respect to a contract under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

(c) The Secretary shall allow as a cost of any contract entered into under section 503 the cost of an annual private audit conducted by a certified public accountant.

(d)(1) The Secretary, acting through the Service, shall submit a report to the Congress not later than March 31, 1992, evaluating—

(A) the health status of urban Indians;

(B) the services provided to Indians through this title;

(C) areas of unmet needs in urban areas served under this title; and

(D) areas of unmet needs in urban areas not served under this title.

(2) In preparing the report under paragraph (1), the Secretary shall consult with urban Indian health providers and may contract with a national organization representing urban Indian health concerns to conduct any aspect of the report.

(3) The Secretary and the Secretary of the Interior shall—

(A) assess the status of the welfare of urban Indian children, including the volume of child protection cases, the prevalence of child sexual abuse, and the extent of urban Indian coordination with tribal authorities with respect to child sexual abuse; and

(B) submit a report on the assessment required under subparagraph (A), together with recommended legislation to improve Indian child protection in urban Indian populations, to the Congress no later than March 31, 1992.[5]

LIMITATION ON CONTRACT AUTHORITY

SEC. 508. [25 U.S.C. 1658] The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

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[5] P.L. 101-630, §507, added subsection (d).

REPORTS

Sec. 701. [25 U.S.C. 1671] The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this Act.

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REGULATIONS

Sec. 702. [25 U.S.C. 1672]

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(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to this Act: *Provided,* That, prior to any revision of or amendment to such rules or regulations, the Secretary shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.

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LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE

Sec. 706. [25 U.S.C. 1676] Any limitation on the use of funds contained in an Act providing appropriations for the Department of Health and Human Services for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Indian Health Service.

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HEALTH SERVICES FOR INELIGIBLE PERSONS

Sec. 713. [25 U.S.C. 1680c]

* * * * * * *

(b) * * *

(2)(A) Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880(c) of the Social Security Act, section 402(c) of this Act, or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the facility providing the service and shall be used solely for the provision of health services within that facility. Amounts collected under this subsection shall be available for expenditure within such facility for not to exceed one fiscal year after the fiscal year in which collected.

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[*Internal References.*— S.S. Act §§1880(a) and (d), 1905(b), 1911(a), and 1920(b) cite the Indian Health Care Improvement Act and S.S. Act title XVIII and §§205, 1102, 1861, 1871, 1880, 1892, and 1911 catchlines and §§1880(c) and 1901 have footnotes referring to P.L. 94-437.]

P.L. 94-566, Approved October 20, 1976 (90 Stat. 2667)

Unemployment Compensation Amendments of 1976

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PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

Sec. 503. [42 U.S.C. 1396a note] In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act, there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act but is not eligible for benefits under title XVI of such Act, in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act which have occurred pursuant to section 215(i) of such Act, in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II, and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI and was entitled to a monthly insurance benefit under such title II. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act or of the type described in section 212(a) of Public Law 93-66 shall be deemed to be benefits under title XVI of the Social Security Act.

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Sec. 508. * * *

(b) [42 U.S.C. 603a] Provision for Reimbursement of Expenses.—For purposes of section 403 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 3(a) of the Act entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49b(a)[1], by a State or local agency administering a State plan approved under part A of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 455 of the Social Security Act, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of title IV of the Social Security Act shall be considered to constitute expenses incurred in the administration of such State plan.

* * * * * * *

[*Internal References.*—S.S. Act §454(19) cites the Unemployment Compensation Amendments of 1976 and §1927(a) cites P.L. 94-566 and S.S. Act titles II, IV, part A and XIX and §§403 and 1634 catchlines and §403(a) have footnotes referring to P.L. 94-566. P.L. 93-66, §212(a) has a footnote referring to P.L. 94-566.]

P.L. 95-30, Approved May 23, 1977 (91 Stat. 126)
Tax Reduction and Simplification Act of 1977

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AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE WORK INCENTIVE PROGRAM

Sec. 401. (a) [42 U.S.C. 602 note] Matching Funds Disregarded.—The Secretary of Health, Education, and Welfare and the Secretary of Labor are authorized to carry out the work incentive program under title IV of the Social Security Act from the sums appropriated pursuant to this Act without regard to the requirements for non-Federal matching funds contained in sections 402(a)(19)(C), 402(a)(19)(G), 403(a)(3)(A), 403(d), and 435 of the Social Security Act.

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[*Internal Reference.*—S.S. Act, title IV, part A has a footnote referring to P.L. 95-30.]

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[1] As in original; probably should have a closing parenthesis.

P.L. 95-142, Approved October 25, 1977 (91 Stat. 1175)
Medicare-Medicaid Anti-Fraud and Abuse Amendments

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SEC. 21. * * *

(b) [42 U.S.C. 1395x note] The Secretary of Health, Education, and Welfare[1] shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII, or under a State plan approved under the provisions of title XIX, of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.

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[*Internal References.*—S.S. Act §§1819(f) and 1919(f) cite the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977.]

P.L. 95-202, Approved November 23, 1977 (91 Stat. 1433)
GI Bill Improvement Act of 1977

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TITLE IV—WOMEN'S AIR FORCES SERVICE PILOTS

SEC. 401. [38 U.S.C. 106 note] (a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II), or the service of any person in any other similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, shall be considered active duty for the purposes of all laws administered by the Veterans' Administration if the Secretary of Defense, pursuant to regulations which the Secretary shall prescribe—

(A) after a full review of the historical records and all other available evidence pertaining to the service of any such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group constituted active military service, and

(B) in the case of any such group with respect to which such Secretary has made an affirmative determination that the service of such group constituted active military service, issues to each member of such group a discharge from such service under honorable conditions where the nature and duration of the service of such member so warrants.

Discharges issued pursuant to the provisions of the first sentence of this paragraph shall designate as the date of discharge that date, as determined by the Secretary of Defense, on which such service by the person concerned was terminated.

(2) In making a determination under clause (A) of paragraph (1) of this subsection with respect to any group described in such paragraph, the Secretary of Defense may take into consideration the extent to which—

(A) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,

(B) the members of such group were subject to military justice, discipline, and control,

(C) the members of such group were permitted to resign,

(D) the members of such group were susceptible to assignment for duty in a combat zone, and

(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

(b)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title as a result of the enactment of subsection (a) of this section.

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[1] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

(2) The provisions of section 106(a)(2) of title 38, United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Veterans' Administration, as a result of implementation of the provisions of subsection (a) of this section.

(c) Under regulations prescribed by the Secretary of Defense, any person who is issued a discharge under honorable conditions pursuant to the implementation of subsection (a) of this section may be awarded any campaign or service medal warranted by such person's service.

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[*Internal Reference.*—S.S. Act §210(m) has a footnote referring to P.L. 95-202.]

P.L. 95-210, Approved December 13, 1977 (91 Stat. 1485)

[Social Security—Rural Health Clinic Services]

SECTION 1.

* * * * * * *

(e) [42 U.S.C 1395x note] Any private, nonprofit health care clinic that—

(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

(2) meets the definition of a rural health clinic under section 1861(aa)(2) or section 1905(l) of the Social Security Act, except for clause (i) of section 1861(aa)(2),

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act, as satisfying the definition of a rural health clinic under such section.

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DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS

SEC. 3. [42 U.S.C. 1395b-1 note] (a) The Secretary shall provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under title XVIII of the Social Security Act and, notwithstanding any other provision of such title, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under such title if provided by a physician.

(b) The demonstration projects developed under subsection (a) shall be of sufficient scope and carried out on a broad enough scale to allow the Secretary to evaluate fully—

(1) the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner;

(2) the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics;

(3) the appropriate definition for such clinics;

(4) the appropriate criteria to use for the purposes of designating urban medically underserved areas; and

(5) such other possible changes in the provisions of title XVIII of the Social Security Act as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics.

(c) Grants, payments under contracts, and other expenditures made for demonstration projects under this section shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each trust fund shall be determined by the Secretary giving due regard to the purposes of the demonstration projects.

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(e) As used in this section, the terms "physician assistant" and "nurse practitioner" have the meanings given such terms in section 1861(aa)(3) of the Social Security Act.

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[*Internal References.*—S.S. Act §§1861(aa) and 1910 catchlines have a footnote referring to P.L. 95-210. P.L. 90-248, §402 catchline has a footnote referring to P.L. 95-210.]

P.L. 95-216, Approved December 20, 1977 (91 Stat. 1509)
Social Security Amendments of 1977

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REDUCED BENEFITS FOR SPOUSES RECEIVING GOVERNMENT PENSIONS

SEC. 334.

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(g) [42 U.S.C. 402 note] (1) The amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.

(h) [42 U.S.C. 402 note] In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2)) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).

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[*Internal References.*—S.S. Act §§203(a), 209(k), 215(a), and 230(d) cite the Social Security Amendments of 1977 and S.S. Act §§202(b), (c), (e), (f), and (g) catchlines have footnotes referring to P.L. 95-216.]

P.L. 95-250, Approved March 27, 1978 (92 Stat. 163)

[Redwood National Park]

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DEFINITIONS

SEC. 201. [None assigned.] As used in this title, the term—

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(19) Notwithstanding[1] any other provision of this Act, the Secretary shall reduce the amount of terminal pay for an employee, as calculated pursuant to section 207, 208, or 209, by the amount of the Federal and State income taxes which would be required to be withheld by an employer from wages equal to such terminal pay if paid to an employee with the same number of income tax exemptions as the recipient. For purposes of determining the amounts of such reductions with respect to severance payments made pursuant to sections 208 and 209, said severance payments shall be prorated over the number of weeks the equivalent sums would have been paid if the employees were eligible for and claiming the weekly layoff benefits provided in section 207. The Secretary shall withhold social security contributions from terminal pay in the same amounts as would be withheld if such pay (before the reductions provided for in this subsection) were wages and the Secretary shall make contributions on behalf of employees receiving terminal pay to the trust funds created under section 201 of the Social Security Act equal to the contributions required to be made by an employer paying wages equal to such unreduced terminal pay; and

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SEC. 204. [None assigned.]

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(b) The Secretary shall provide, additionally, for continuing entitlement to health and welfare benefits (other than group life and additional death, dismemberment, and loss of sight benefits) for employees who—

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(4) are not eligible for benefits under title XVIII of the Social Security Act.

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[*Internal References.*—S.S. Act title XVIII and §201 catchlines have footnotes referring to P.L. 95-250.]

P.L. 95-433, Approved October 10, 1978 (92 Stat. 1047)

[Indian Claims Commission—Confederated Tribes and Bands of the Yakima Indian Nation]

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[1] As in original. Possibly should be "notwithstanding".

SEC. 2. [25 U.S.C. 609c-1] Any part of any of the judgment funds referred to in the first section of this Act that may be distributed per capita to, or held in trust for the benefit of, the members of a tribe, including minor's shares, shall not be subject to Federal or State income tax, and the per capita payment shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act, or any other Federal or federally assisted program.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 95-433.]

P.L. 95-498, Approved October 21, 1978 (92 Stat. 1672)
[Pueblo of Santa Ana Indians, New Mexico]

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SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Santa Ana pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 95-498.]

P.L. 95-499, Approved October 21, 1978 (92 Stat. 1679)
[Pueblo of Zia, New Mexico Indians]

* * * * * * *

SEC. 6. [None assigned.] All property declared to be held in trust for the benefit and use of the Pueblo of Zia pursuant to this Act, and all the receipts therefrom referred to in section 5 of this Act, shall be exempt from Federal, State, and local taxation so long as such property is held in trust by the United States. Any distribution of such receipts to tribal members shall neither be considered as income or resources of such members for purposes of any such taxation nor as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such member or his household would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program.

* * * * * * *

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 95-499.]

Provisions Affecting Social Security Programs
P.L. 95-521, Approved October 26, 1978 (92 Stat. 1824)
Ethics in Government Act of 1978

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SEC. 102. [2 U.S.C. 702] CONTENTS OF REPORTS

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(i) A reporting individual shall not be required under this title to report—

(1) financial interests in or income derived from—

(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

(2) benefits received under the Social Security Act.[1]

* * * * * * *

[*Internal Reference.*—S.S. Act title II catchline has a footnote referring to P.L. 95-521.]

P.L. 95-557, Approved October 31, 1978 (92 Stat. 2080)

Housing and Community Development Amendments of 1978

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SHORT TITLE

Sec. 401. [42 U.S.C. 8001 note] This title may be cited as the "Congregate Housing Services Act of 1978".

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MISCELLANEOUS PROVISIONS

Sec. 410. [42 U.S.C. 8009]

* * * * * * *

(b) No service provided to a public housing resident or to a resident of a housing project assisted under section 202 of the Housing Act of 1959[1] under this title, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

* * * * * * *

[*Internal References.*—S.S. Act §1612(b) catchline and §§2(a), 402(a), 1002(a), 1402(a), 1602(a)(State), and 1612(a) have footnotes referring to P.L. 95-557.]

P.L. 95-588, Approved November 4, 1978 (92 Stat. 2497)

Veterans' and Survivors' Pension Improvement Act of 1978

* * * * * * *

SAVINGS PROVISIONS FOR PERSONS ENTITLED TO PENSION AS OF DECEMBER 31, 1978

Sec. 306. [38 U.S.C. 521 note] (a)(1)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, may elect to receive pension under such section as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(2) Any person eligible to make an election under paragraph (1) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 521, 541, or 542, as appropriate, of title 38, United States Code, as in effect on December 31, 1978, except that—

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[1] P.L. 101-280, §3(3)(D), added subsection (i).

[1] See P.L. 86-372, §202, in this volume.

(A) pension may not be paid to such person if such person's annual income (determined in accordance with section 503 of title 38, United States Code, as in effect on December 31, 1978) exceeds $4,038, in the case of a veteran or surviving spouse without dependents, $5,430, in the case of a veteran or surviving spouse with one or more dependents, or $3,299, in the case of a child; and

(B) the amount prescribed in subsection (f)(1) of section 521 of such title (as in effect on December 31, 1978) shall be $1,285;

as each such amount is increased from time to time under paragraph (3).

(3) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall, effective on the date of such increase under such section 3112, increase—

(A) the annual income limitations in effect under paragraph (2); and

(B) the amount of income of a veteran's spouse excluded from the annual income of such veteran under section 521(f)(1) of such title, as in effect on December 31, 1978;

by the same percentage as the percentage by which such maximum annual rates under such sections 521, 541, and 542 are increased.

(b)(1) Effective January 1, 1979, section 9 of the Veterans' Pension Act of 1959 (Public Law 86-211) is repealed.

(2)(A) Except as provided in subparagraph (B), any person who as of December 31, 1978, is entitled to receive pension under section 9(b) of the Veterans' Pension Act of 1959 may elect to receive pension under section 521, 541, or 542 of title 38, United States Code, as in effect after such date, subject to the terms and conditions in effect with respect to the receipt of such pension. Any such election shall be made in such form and manner as the Administrator of Veterans' Affairs may prescribe. If pension is paid pursuant to such an election, the election shall be irrevocable.

(B) Any veteran eligible to make an election under subparagraph (A) who is married to another veteran who is also eligible to make such an election may not make such an election unless both such veterans make such an election.

(3) Any person eligible to make an election under paragraph (2) who does not make such an election shall continue to receive pension at the monthly rate being paid to such person on December 31, 1978, subject to all provisions of law applicable to basic eligibility for and payment of pension under section 9(b) of the Veterans' Pension Act of 1959, as in effect on December 31, 1978, except that pension may not be paid to such person if such person's annual income (determined in accordance with the applicable provisions of law, as in effect on December 31, 1978) exceeds $3,534, in the case of a veteran or surviving spouse without dependents or in the case of a child, or $5,098, in the case of a veteran or surviving spouse with one or more dependents, as each such amount is increased from time to time under paragraph (4).

(4) Whenever there is an increase under section 3112 of title 38, United States Code (as added by section 304 of this Act), in the maximum annual rates of pension under sections 521, 541, and 542 of such title, as in effect after December 31, 1978, the Administrator shall, effective on the date of such increase under such section 3112, increase the annual income limitations in effect under paragraph (3) by the same percentage as the percentage by which the maximum annual rates under such sections 521, 542, and 543 are increased.

(c) Any case in which—

(1) a claim for pension is pending in the Veterans' Administration on December 31, 1978;

(2) a claim for pension is filed by a veteran after December 31, 1978, and within one year after the date on which such veteran became totally and permanently disabled, if such veteran became totally and permanently disabled before January 1, 1979; or

(3) a claim for pension is filed by a surviving spouse or by a child after December 31, 1978, and within one year after the date of death of the veteran through whose relationship such claim is made, if the death of such veteran occurred before January 1, 1979;

shall be adjudicated under title 38, United States Code, as in effect on December 31, 1978. Any benefits determined to be payable as the result of the adjudication of such a claim shall be subject to the provisions of subsection (a).

(d) In any case in which any person who as of December 31, 1978, is entitled to receive pension under section 521, 541, or 542 of title 38, United States Code, or under section 9(b) of the Veterans' Pension Act of 1959, elects (in accordance with subsection (a)(1) or (b)(2), as appropriate) before October 1, 1979, to receive pension under such section as in effect after December 31, 1978, the Administrator of Veterans' Affairs shall pay to such person an amount equal to the amount by which the amount of pension benefits such person would have received had such election been made on January 1, 1979, exceeds the amount of pension benefits actually paid to such person for the period beginning on January 1, 1979, and ending on the date preceding the date of such election.

(e) Whenever there is an increase under subsections (a)(3) and (b)(4) in the annual income limitations with respect to persons being paid pension under subsections (a)(2) and (b)(3), the Administrator of Veterans' Affairs shall publish such annual income limitations, as increased pursuant to such subsections, in the Federal Register at the same time as the material required by section 215(i)(2)(D) of the Social Security Act is published by reason of a determination under section 215(i) of such Act.

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[*Internal References.*—S.S. Act §1133(a) cites the Veterans' and Survivors' Pension Improvement Act of 1978.]

P.L. 95-608, Approved November 8, 1978 (92 Stat. 3069)
Indian Child Welfare Act of 1978

* * * * * * *

SEC. 2. [25 U.S.C. 1901] Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—

(1) that clause 3, section 8, article I of the United States Constitution provides that "The Congress shall have Power * * * To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;

(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;

(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;

(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; and

(5) that the States, exercising their recognized jurisdiction over Indian child custody proceedings through administrative and judicial bodies, have often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families.

SEC. 3. [25 U.S.C. 1902] The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

SEC. 4. [25 U.S.C. 1903] For the purposes of this Act, except as may be specifically provided otherwise, the term—

(1) "child custody proceeding" shall mean and include—

(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(2) "extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent;

(3) "Indian" means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689);

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

(5) "Indian child's tribe" means (a) the Indian tribe in which an Indian child is a member or eligible for membership or (b), in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts;

(6) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child;

(7) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians;

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended;

(9) "parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established;

(10) "reservation" means Indian country as defined in section 1151 of title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation;

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

TITLE I—CHILD CUSTODY PROCEEDINGS

SEC. 101. [25 U.S.C. 1911] (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: *Provided,* That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

SEC. 102. [25 U.S.C. 1912] (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided,* That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(c) Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

SEC. 103. [25 U.S.C. 1913] (a) Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

(d) After the entry of a final decree of adoption of an Indian child in any State court, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under the provisions of this subsection unless otherwise permitted under State law.

SEC. 104. [25 U.S.C. 1914] Any Indian child who is the subject of any action for foster care placement or termination of parental rights under State law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 103 of this Act.

SEC. 105. [25 U.S.C. 1915] (a) In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

(b) Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family;

(ii) a foster home licensed, approved, or specified by the Indian child's tribe;

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court effecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in subsection (b) of this section. Where appropriate, the preference of the Indian child or parent shall be considered: *Provided,* That where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

(d) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(e) A record of each such placement, under State law, of an Indian child shall be maintained by the State in which the placement was made, evidencing the efforts to comply with the order of preference specified in this section. Such record shall be made available at any time upon the request of the Secretary or the Indian child's tribe.

SEC. 106. [25 U.S.C. 1916] (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a biological parent or prior Indian custodian may petition for return of custody and the court shall grant such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is not in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, preadoptive, or adoptive placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

SEC. 107. [25 U.S.C. 1917] Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

SEC. 108. [25 U.S.C. 1918] (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), as amended by title IV of the Act of April 11, 1968 (82 Stat. 73, 78), or pursuant to any other Federal law, may reassume jurisdiction over child custody proceedings. Before any Indian tribe may reassume jurisdiction over Indian child custody proceedings, such tribe shall present to the Secretary for approval a petition to reassume such jurisdiction which includes a suitable plan to exercise such jurisdiction.

(b)(1) In considering the petition and feasibility of the plan of a tribe under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who will be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jursidiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogeneous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multitribal occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval. If the Secretary disapproves any petition under subsection (a), the Secretary shall provide such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

SEC. 109. [25 U.S.C. 1919] (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such revocation shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

SEC. 110. [25 U.S.C. 1920] Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

SEC. 111. [25 U.S.C. 1921] In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

SEC. 112. [25 U.S.C. 1922] Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall insure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

SEC. 113. [25 U.S.C. 1923] None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, preadoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

TITLE II—INDIAN CHILD AND FAMILY PROGRAMS

SEC. 201. [25 U.S.C. 1931] (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to—

(1) a system for licensing or otherwise regulating Indian foster and adoptive homes;

(2) the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care;

(4) home improvement programs;

(5) the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;

(6) education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and

(8) guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

Sec. 202. [25 U.S.C. 1932] The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to—

(1) a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Sec. 203. [25 U.S.C. 1933] (a) In the establishment, operation, and funding of Indian child and family service programs, both on and off reservation, the Secretary may enter into agreements with the Secretary of Health, Education, and Welfare[1], and the latter Secretary is hereby authorized for such purposes to use funds appropriated for similar programs of the Department of Health, Education, and Welfare: *Provided*, That authority to make payments pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 2, 1921 (42 Stat. 208), as amended.

Sec. 204. [25 U.S.C. 1934] For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

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[*Internal References.*—S.S. Act titles II and IV, part B and §405 catchlines and §§402(a) and 1631(a) have footnotes referring to P.L. 95-608.]

P.L. 95-630, Approved November 10, 1978 (92 Stat. 3641)

Financial Institutions Regulatory and Interest Rate Control Act of 1978

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[1] P.L. 96-88, §509(b), deemed this reference to be to the Secretary of Health and Human Services.

TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. [12 U.S.C. 3401 note] This title may be cited as the "Right to Financial Privacy Act of 1978".

DEFINITIONS

SEC. 1101. [12 U.S.C. 3401] For the purpose of this title, the term—

(1) "financial institution" means any office of a bank, savings bank, card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)), industrial loan company, trust company, savings association[1], building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution;

(3) "Government authority" means any agency or department of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or fewer individuals;

(5) "customer" means any person or authorized representative of that person who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the person's name;

(6) "holding company" means—

(A) any bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

(B) any company described in section 3(f)(1) of the Bank Holding Company Act of 1956; and

(C) any savings and loan holding company (as defined in the Home Owners' Loan Act);[2]

(7)[3] "supervisory agency" means with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary[4]—

(A) the Federal Deposit Insurance Corporation;

(B)[5] Director, Office of Thrift Supervision[6];

(C)[7] the National Credit Union Administration;

(D)[8] the Board of Governors of the Federal Reserve System;

(E)[9] the Comptroller of the Currency;

(F)[10] the Securities and Exchange Commission;

(G)[11] the Secretary of the Treasury, with respect to the Bank Secrecy Act and the Currency and Foreign Transactions Reporting Act (Public Law 91-508, title I and II); or

(H)[12] any State banking or securities department or agency; and

(8)[13] "law enforcement inquiry" means a lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, any criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

CONFIDENTIALITY OF RECORDS—GOVERNMENT AUTHORITIES

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[1] P.L. 101-73, §744(b)(1), struck out "and loan" and substituted "association".

[2] P.L. 101-73, §941(3), added this paragraph (6).

[3] P.L. 101-73, §941(1), redesignated paragraph (6) as paragraph (7).

[4] P.L. 101-73, §941(2), struck out ", with respect to any particular financial institution any of the following which has statutory authority to examine the financial condition or business operations of that institution" and substituted "with respect to any particular financial institution, holding company, or any subsidiary of a financial institution or holding company, any of the following which has statutory authority to examine the financial condition, business operations, or records or transactions of that institution, holding company, or subsidiary".

[5] P.L. 101-73, §744(b)(2), struck out the former subparagraph (B) and redesignated subparagraph (C) as subparagraph (B).

[6] P.L. 101-73, §744(b)(3), struck out "the Federal Home Loan Bank Board" and substituted "Director, Office of Thrift Supervision".

[7] P.L. 101-73, §744(b)(2), redesignated subparagraph (D) as subparagraph (C).

[8] P.L. 101-73, §744(b)(2), redesignated subparagraph (E) as subparagraph (D).

[9] P.L. 101-73, §744(b)(2), redesignated subparagraph (F) as subparagraph (E).

[10] P.L. 101-73, §744(b)(2), redesignated subparagraph (G) as subparagraph (F).

[11] P.L. 101-73, §744(b)(2), redesignated subparagraph (H) as subparagraph (G).

[12] P.L. 101-73, §744(b)(2), redesignated subparagraph (I) as subparagraph (H).

[13] P.L. 101-73, §941(1), redesignated paragraph (7) as paragraph (8).

SEC. 1102. [12 U.S.C. 3402] Except as provided by section 1103(c) or (d), 1113, or 1114, no Government authority may have access to or obtain copies of, or the information contained in the financial records of any customer from a financial institution unless the financial records are reasonably described and—

(1) such customer has authorized such disclosure in accordance with section 1104;

(2) such financial records are disclosed in response to an administrative subpena or summons which meets the requirements of section 1105;

(3) such financial records are disclosed in response to a search warrant which meets the requirements of section 1106;

(4) such financial records are disclosed in response to a judicial subpena which meets the requirements of section 1107; or

(5) such financial records are disclosed in response to a formal written request which meets the requirements of section 1108.

CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

SEC. 1103. [12 U.S.C. 3403] (a) No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this title.

(b) A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this title.

(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. Such information may include only the name or other identifying information concerning any individual, corporation, or account involved in and the nature of any suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.

(d)(1) Nothing in this title shall preclude a financial institution, as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the financial institution itself or in its role as a fiduciary, from providing copies of any financial record to any court or Government authority.

(2) Nothing in this title shall preclude a financial institution, as an incident to processing an application for assistance to a customer in the form of a Government loan, loan guaranty, or loan insurance agreement, or as an incident to processing a default on, or administering, a Government guaranteed or insured loan, from initiating contact with an appropriate Government authority for the purpose of providing any financial record necessary to permit such authority to carry out its responsibilities under a loan, loan guaranty, or loan insurance agreement.

CUSTOMER AUTHORIZATIONS

SEC. 1104. [12 U.S.C. 3404] (a) A customer may authorize disclosure under section 1102(1) if he furnishes to the financial institution and to the Government authority seeking to obtain such disclosure a signed and dated statement which—

(1) authorizes such disclosure for a period not in excess of three months;

(2) states that the customer may revoke such authorization at any time before the financial records are disclosed;

(3) identifies the financial records which are authorized to be disclosed;

(4) specifies the purposes for which, and the Government authority to which, such records may be disclosed; and

(5) states the customer's rights under this title.

(b) No such authorization shall be required as a condition of doing business with any financial institution.

(c) The customer has the right, unless the Government authority obtains a court order as provided in section 1109, to obtain a copy of the record which the financial institution shall keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

ADMINISTRATIVE SUBPENA AND SUMMONS

Sec. 1105. [12 U.S.C. 3405] A Government authority may obtain financial records under section 1102(2) pursuant to an administrative subpena or summons otherwise authorized by law only if—

(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached subpena or summons are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States district courts:

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to   .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer."; and

(3) ten days have expired from the date of service of the notice or fourteen days have expired from the date of mailing the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

SEARCH WARRANTS

Sec. 1106. [12 U.S.C. 3406] (a) A Government authority may obtain financial records under section 1102(3) only if it obtains a search warrant pursuant to the Federal Rules of Criminal Procedure.

(b) No later than ninety days after the Government authority serves the search warrant, it shall mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date) for the following purpose: . You may have rights under the Right to Financial Privacy Act of 1978.".

(c) Upon application of the Government authority, a court may grant a delay in the mailing of the notice required in subsection (b), which delay shall not exceed one hundred and eighty days following the service of the warrant, if the court makes the findings required in section 1109(a). If the court so finds, it shall enter an ex parte order granting the requested delay and an order prohibiting the financial institution from disclosing that records have been obtained or that a search warrant for such records has been executed. Additional delays of up to ninety days may be granted by the court upon application, but only in accordance with this subsection. Upon expiration of the period of delay of notification of the customer, the following notice shall be mailed to the customer along with a copy of the search warrant:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or department) on (date). Notification was delayed beyond the statutory ninety-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning   . You may have rights under the Right to Financial Privacy Act of 1978.".

JUDICIAL SUBPENA

SEC. 1107. [12 U.S.C. 3407] A Government authority may obtain financial records under section 1102(4) pursuant to judicial subpena only if—

(1) such subpena is authorized by law and there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry;

(2) a copy of the subpena has been served upon the customer or mailed to his last known address on or before the date on which the subpena was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached subpena are being sought by this (agency or department or authority) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of the Court.

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(3) ten days have expired from the date of service or fourteen days from the date of mailing of the notice to the customer and within such time period the customer has not filed a sworn statement and motion to quash in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

FORMAL WRITTEN REQUEST

SEC. 1108. [12 U.S.C. 3408] A Government authority may request financial records under section 1102(5) pursuant to a formal written request only if—

(1) no administrative summons or subpena authority reasonably appears to be available to that Government authority to obtain financial records for the purpose for which such records are sought;

(2) the request is authorized by regulations promulgated by the head of the agency or department;

(3) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

(4)(A) a copy of the request has been served upon the customer or mailed to his last known address on or before the date on which the request was made to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions held by the financial institution named in the attached request are being sought by this (agency or department) in accordance with the Right to Financial Privacy Act of 1978 for the following purpose:

"If you desire that such records or information not be made available, you must:

"1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Government and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

"2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts: .

"3. Serve the Government authority requesting the records by mailing or delivering a copy of your motion and statement to .

"4. Be prepared to come to court and present your position in further detail.

"5. You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or fourteen days from the date of mailing of this notice, the records or information requested therein may be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer;" and

(B) ten days have expired from the date of service or fourteen days from the date of mailing of the notice by the customer and within such time period the customer has not filed a sworn statement and an application to enjoin the Government authority in an appropriate court, or the customer challenge provisions of section 1110 have been complied with.

DELAYED NOTICE—PRESERVATION OF RECORDS

SEC. 1109. [12 U.S.C. 3409] (a) Upon application of the Government authority, the customer notice required under section 1104(c), 1105(2), 1106(c), 1107(2), 1108(4), or 1112(b) may be delayed by order of an appropriate court if the presiding judge or magistrate finds that—

(1) the investigation being conducted is within the lawful jurisdiction of the Government authority seeking the financial records;

(2) there is reason to believe that the records being sought are relevant to a legitimate law enforcement inquiry; and

(3) there is reason to believe that such notice will result in—

(A) endangering life or physical safety of any person;

(B) flight from prosecution;

(C) destruction of or tampering with evidence;

(D) intimidation of potential witnesses; or

(E) otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same extent as the circumstances in the preceeding[14] subparagraphs.

An application for delay must be made with reasonable specificity.

(b)(1) If the court makes the findings required in paragraphs (1), (2), and (3) of subsection (a), it shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution from disclosing that records have been obtained or that a request for records has been made, except that, if the records have been sought by a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), the International Emergency Economic Powers Act (title II, Public Law 95-223), or section 5 of the United Nations Participation Act (22 U.S.C. 287c), and the court finds that there is reason to believe that such notice may endanger the lives or physical safety of a customer or group of customers, or any person or group of persons associated with a customer, the court may specifiy that the delay be indefinite.

(2) Extensions of the delay of notice provided in paragraph (1) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection.

(3) Upon expiration of the period of delay of notification under paragraph (1) or (2), the customer shall be served with or mailed a copy of the process or request together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under the Right to Financial Privacy Act of 1978 that such notice might (state reason). The purpose of the investigation or official proceeding was ________."

(c) When access to financial records is obtained pursuant to section 1114(b) (emergency access), the Government authority shall, unless a court has authorized delay of notice pursuant to subsections (a) and (b), as soon as practicable after such records are obtained serve upon the customer, or mail by registered or certified mail to his last known address, a copy of the request to the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry:

"Records concerning your transactions held by the financial institution named in the attached request were obtained by (agency or department) under the Right to

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[14] As in original. Should be "preceding".

Financial Privacy Act of 1978 on (date) for the following purpose: Emergency access to such records was obtained on the grounds that (state grounds).".

(d) Any memorandum, affidavit, or other paper filed in connection with a request for delay in notification shall be preserved by the court. Upon petition by the customer to whom such records pertain, the court may order disclosure of such papers to the petitioner unless the court makes the findings required in subsection (a).

CUSTOMER CHALLENGE PROVISIONS

SEC. 1110. [12 U.S.C. 3410] (a) Within ten days of service or within fourteen days of mailing of a subpena, summons, or formal written request, a customer may file a motion to quash an administrative summons or judicial subpena, or an application to enjoin a Government authority from obtaining financial records pursuant to a formal written request, with copies served upon the Government authority. A motion to quash a judicial subpena shall be filed in the court which issued the subpena. A motion to quash an administrative summons or an application to enjoin a Government authority from obtaining records pursuant to a formal written request shall be filed in the appropriate United States district court. Such motion or application shall contain an affidavit or sworn statement—

(1) stating that the applicant is a customer of the financial institution from which financial records pertaining to him have been sought; and

(2) stating the applicant's reasons for believing that the financial records sought are not relevant to the legitimate law enforcement inquiry stated by the Government authority in its notice, or that there has not been substantial compliance with the provisions of this title.

Service shall be made under this section upon a Government authority by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this title. For the purposes of this section, "delivery" has the meaning stated in rule 5(b) of the Federal Rules of Civil Procedure.

(b) If the court finds that the customer has complied with subsection (a), it shall order the Government authority to file a sworn response, which may be filed in camera if the Government includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided within seven calendar days of the filing of the Government's response.

(c) If the court finds that the applicant is not the customer to whom the financial records sought by the Government authority pertain, or that there is a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, it shall deny the motion or application, and, in the case of an administrative summons or court order other than a search warrant, order such process enforced. If the court finds that the applicant is the customer to whom the records sought by the Government authority pertain, and that there is not a demonstrable reason to believe that the law enforcement inquiry is legitimate and a reasonable belief that the records sought are relevant to that inquiry, or that there has not been substantial compliance with the provisions of this title, it shall order the process quashed or shall enjoin the Government authority's formal written request.

(d) A court ruling denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer. An appeal of a ruling denying a motion or application under this section may be taken by the customer (1) within such period of time as provided by law as part of any appeal from a final order in any legal proceeding initiated against him arising out of or based upon the financial records, or (2) within thirty days after a notification that no legal proceeding is contemplated against him. The Government authority obtaining the financial records shall promptly notify a customer when a determination has been made that no legal proceeding against him is contemplated. After one hundred and eighty days from the denial of the motion or application, if the Government authority obtaining the records has not initiated such a proceeding, a supervisory official of the Government authority shall certify to the appropriate court that no such determination has been made. The court may require that such certifications be made, at reasonable intervals thereafter, until either notification to the customer has occurred or a legal proceeding is initiated as described in clause (A).

(e) The challenge procedures of this title constitute the sole judicial remedy available to a customer to oppose disclosure of financial records pursuant to this title.

(f) Nothing in this title shall enlarge or restrict any rights of a financial institution to challenge requests for records made by a Government authority under existing law. Nothing in this title shall entitle a customer to assert the rights of a financial institution.

DUTY OF FINANCIAL INSTITUTIONS

SEC. 1111. [12 U.S.C 3411] Upon receipt of a request for financial records made by a Government authority under section 1105 or 1107, the financial institution shall, unless otherwise provided by law, proceed to assemble the records requested and must be prepared to deliver the records to the Government authority upon receipt of the certificate required under section 1103(b).

USE OF INFORMATION

SEC. 1112. [12 U.S.C. 3412] (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department.

(b) When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: "Copies of, or information contained in, your financial records lawfully in possession of   have been furnished to   pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: . If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974."

(c) Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109(a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109(a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109(a) and (b) shall serve to the customer the notice specified in section 1109(b).

(d) Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer's financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) Notwithstanding section 1101(6) or any other provision of this title, the exchange of financial records or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company,[15] among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council and the Securities and Exchange Commission[16] is permitted.

(f) TRANSFER TO ATTORNEY GENERAL.—

(1) IN GENERAL.—Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency's or department's supervisory or regulatory functions.

(2) LIMITATION ON USE.—Records so transferred shall be used only for criminal investigative or prosecutive purposes by the Department of Justice and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department.

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[15] P.L. 101-73, §944(1), inserted ", holding company, or any subsidiary of a depository institution or holding company," after "with respect to a depository institution". Executed as if this amendment read "after 'with respect to a financial institution' ".

[16] P.L. 101-73, §944(2), inserted "and the Securities and Exchange Commission".

EXCEPTIONS

SEC. 1113. [12 U.S.C. 3413] (a) Nothing in this title prohibits the disclosure of any financial records or information which is not identified with or identifiable as being derived from the financial records of a particular customer.

(b) This chapter shall not apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of its supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, subsidiary of a financial institution or holding company, institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to a financial institution, holding company, or subsidiary, or other person participating in the conduct of the affairs thereof.[17]

(c) Nothing in this title prohibits the disclosure of financial records in accordance with procedures authorized by the Internal Revenue Code.

(d) Nothing in this title shall authorize the withholding of financial records or information required to be reported in accordance with any Federal statute or rule promulgated thereunder.

(e) Nothing in this title shall apply when financial records are sought by a Government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the Government authority and the customer are parties.

(f) Nothing in this title shall apply when financial records are sought by a Government authority pursuant to an administrative subpena issued by an administrative law judge in an adjudicatory proceeding subject to section 554 of title 5, United States Code, and to which the Government authority and the customer are parties.

(g) The notice requirements of this title and sections 1110 and 1112 shall not apply when a Government authority by a means described in section 1102 and for a legitimate law enforcement inquiry is seeking only the name, address, account number, and type of account of any customer or ascertainable group of customers associated (1) with a financial transaction or class of financial transactions, or (2) with a foreign country or subdivision thereof in the case of a Government authority exercising financial controls over foreign accounts in the United States under section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)); the International Emergency Economic Powers Act (title II, Public Law 95-223); or section 5 of the United Nations Participation Act (22 U.S.C. 287(c)).

(h)(1) Nothing in this title (except sections 1103, 1117 and 1118) shall apply when financial records are sought by a Government authority—

(A) in connection with a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records or at a legal entity which is not a customer; or

(B) in connection with the authority's consideration or administration of assistance to the customer in the form of a Government loan, loan guaranty, or loan insurance program.

(2) When financial records are sought pursuant to this subsection, the Government authority shall submit to the financial institution the certificate required by section 1103(b). For access pursuant to paragraph (1)(B), no further certification shall be required for subsequent access by the certifying Government authority during the term of the loan, loan guaranty, or loan insurance agreement.

(3) After the effective date of this title, whenever a customer applies for participation in a Government loan, loan guaranty, or loan insurance program, the Government authority administering such program shall give the customer written notice of the authority's access rights under this subsection. No further notification shall be required for subsequent access by that authority during the term of the loan, loan guaranty, or loan insurance agreement.

(4) Financial records obtained pursuant to this subsection may be used only for the purpose for which they were originally obtained, and may be transferred to another agency or department only when the transfer is to facilitate a lawful proceeding, investigation, examination, or inspection directed at the financial institution in possession of such records, or at a legal entity which is not a customer, except that—

(A) nothing in this paragraph prohibits the use or transfer of a customer's financial records needed by counsel representing a Government authority in a civil action arising from a Government loan, loan guaranty, or loan insurance agreement; and

(B) nothing in this paragraph prohibits a Government authority providing assistance to a customer in the form of a loan, loan guaranty, or loan insurance agreement from using or transferring financial records necessary to process, service or foreclose a loan, or to collect on an indebtedness to the Government resulting from a customer's default.

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[17] P.L. 101-73, §942(1), amended subsection (b) in its entirety.

(5) Notification that financial records obtained pursuant to this subsection may relate to a potential civil, criminal, or regulatory violation by a customer may be given to an agency or department with jurisdiction over that violation, and such agency or department may then seek access to the records pursuant to the provisions of this title.

(6) Each financial institution shall keep a notation of each disclosure made pursuant to paragraph (1)(B) of this subsection, including the date of such disclosure and the Government authority to which it was made. The customer shall be entitled to inspect this information.

(i) Nothing in this title (except sections 1115 and 1120) shall apply to any subpena or court order issued in connection with proceedings before a grand jury, except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409).

(j) This title shall not apply when financial records are sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination or audit directed at a government authority.

(k)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board, where the disclosure of such information is necessary to, and such information is used solely for the purpose of, the proper administration of section 1441 of the Internal Revenue Code of 1954, title II of the Social Security Act, or the Railroad Retirement Act of 1974.

(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of the Treasury, the Social Security Administration, or the Railroad Retirement Board and shall be barred from redisclosure by the financial institution or its agents.

(l) Crimes Against Financial Institutions by Insiders.—Nothing in this title shall apply when any financial institution or supervisory agency provides any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution, or of any major borrower from such institution who there is reason to believe may be acting in concert with any such officer, director, employee, or controlling shareholder, to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such person of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of, or by borrowers from, financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31, United States Code or of section 1956 or 1957 of title 18, United States Code[18].

(m) This title shall not apply to the examination by or disclosure to employees or agents of the Board of Governors of the Federal Reserve System or any Federal Reserve Bank of financial records or information in the exercise of the Federal Reserve System's authority to extend credit to the financial institutions or others.[19]

(n) This title shall not apply to the examination by or disclosure to the Resolution Trust Corporation or its employees or agents of financial records or information in the exercise of its conservatorship, receivership, or liquidation functions with respect to a financial institution.[20]

(o) This title shall not apply to the examination by or disclosure to the Federal Housing Finance Board or any of the Federal home loan banks of financial records or information in the exercise of the Federal Housing Finance Board's authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.[21]

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[18] P.L. 101-647, §104, inserted "or of section 1956 or 1957 of title 18, United States Code".

[19] P.L. 101-73, §942(2), added subsection (m).

[20] P.L. 101-73, §942(2), added subsection (n).

[21] P.L. 101-73, §942(2), added subsection (o).

SPECIAL PROCEDURES

SEC. 1114. [12 U.S.C. 3414] (a)(1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; or

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90-331, as amended).

(2) In the instances specified in paragraph (1), the Government authority shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that a Government authority described in paragraph (1) has sought or obtained access to a customer's financial records.

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.

(b)(1) Nothing in this title shall prohibit a Government authority from obtaining financial records from a financial institution if the Government authority determines that delay in obtaining access to such records would create imminent danger of—

(A) physical injury to any person;

(B) serious property damage; or

(C) flight to avoid prosecution.

(2) In the instances specified in paragraph (1), the Government shall submit to the financial institution the certificate required in section 1103(b) signed by a supervisory official of a rank designated by the head of the Government authority.

(3) Within five days of obtaining access to financial records under this subsection, the Government authority shall file with the appropriate court a signed, sworn statement of a supervisory official of a rank designated by the head of the Government authority setting forth the grounds for the emergency access. The Government authority shall thereafter comply with the notice provisions of section 1109(c).

(4) The Government authority specified in paragraph (1) shall compile an annual tabulation of the occasions in which this section was used.

COST REIMBURSEMENT

SEC. 1115. (a) [12 U.S.C. 3415] Except for records obtained pursuant to section 1103(d) or 1113(a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) [12 U.S.C. 3415 note] This section shall take effect on October 1, 1979.

JURISDICTION

Sec. 1116. [12 U.S.C. 3416] An action to enforce any provision of this title may be brought in any appropriate United States district court without regard to the amount in controversy within three years from the date on which the violation occurs or the date of discovery of such violation, whichever is later.

CIVIL PENALTIES

Sec. 1117. [12 U.S.C. 3417] (a) Any agency or department of the United States or financial institution obtaining or disclosing financial records or information contained therein in violation of this title is liable to the customer to whom such records relate in an amount equal to the sum of—

(1) $100 without regard to the volume of records involved;

(2) any actual damages sustained by the customer as a result of the disclosure;

(3) such punitive damages as the court may allow, where the violation is found to have been willful or intentional; and

(4) in the case of any successful action to enforce liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Whenever the court determines that any agency or department of the United States has violated any provision of this title and the court finds that the circumstances surrounding the violation raise questions of whether an officer or employee of the department or agency acted willfully or intentionally with respect to the violation, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. The Commission after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(c) Any financial institution or agent or employee thereof making a disclosure of financial records pursuant to this title in good-faith reliance upon a certificate by any Government authority or pursuant to the provisions of section 1113(l) shall not be liable to the customer for such disclosure under this title, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(d) The remedies and sanctions described in this title shall be the only authorized judicial remedies and sanctions for violations of this title.

INJUNCTIVE RELIEF

Sec. 1118. [12 U.S.C. 3418] In addition to any other remedy contained in this title, injunctive relief shall be available to require that the procedures of this title are complied with. In the event of any successful action, costs together with reasonable attorney's fees as determined by the court may be recovered.

SUSPENSION OF STATUTES OF LIMITATIONS

Sec. 1119. [12 U.S.C. 3419] If any individual files a motion or application under this title which has the effect of delaying the access of a Government authority to financial records pertaining to such individual, any applicable statute of limitations shall be deemed to be tolled for the period extending from the date such motion or application was filed until the date upon which the motion or application is decided.

GRAND JURY INFORMATION

Sec. 1120. (a)[22] [12 U.S.C. 3420] Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) shall be returned and actually presented to the grand jury unless the volume of such records makes such return and actual presentation impractical in which case the grand jury shall be provided with a description of the contents of the records.[23];

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure;

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[22] P.L. 101-73, §943, inserted "(a)".

[23] As in original. Period should be stricken.

(3) shall be destroyed or returned to the financial institution if not used for one of the purposes specified in paragraph (2); and

(4) shall not be maintained, or a description of the contents of such records shall not be maintained by any Government authority other than in the sealed records of the grand jury, unless such record has been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure.

(b)(1) No officer, director, partner, employee, or shareholder of, or agent or attorney for, a financial institution shall, directly or indirectly, notify any person named in a grand jury subpoena served on such institution in connection with an investigation relating to a possible—

(A) crime against any financial institution or supervisory agency; or

(B) conspiracy to commit such a crime,

about the existence or contents of such subpoena, or information that has been furnished to the grand jury in response to such subpoena.

(2) Section 8 of the Federal Deposit Insurance Act and section 206(k)(2) of the Federal Credit Union Act shall apply to any violation of this subsection.[24]

REPORTING REQUIREMENTS

Sec. 1121. [12 U.S.C. 3421] (a) In April of each year, the Director of the Administrative Office of the United States Courts shall send to the appropriate committees of Congress a report concerning the number of applications for delays of notice made pursuant to section 1109 and the number of customer challenges made pursuant to section 1110 during the preceding calendar year. Such report shall include: the identity of the Government authority requesting a delay of notice; the number of notice delays sought and the number granted under each subparagraph of section 1109(a)(3); the number of notice delay extensions sought and the number granted; and the number of customer challenges made and the number that are successful.

(b) In April of each year, each Government authority that requests access to financial records of any customer from a financial institution pursuant to section 1104, 1105, 1106, 1107, 1108, 1109, or 1114 shall send to the appropriate committees of Congress a report describing requests made during the preceding calendar year. Such report shall include the number of requests for records made pursuant to each section of this title listed in the preceding sentence and any other related information deemed relevant or useful by the Government authority.

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[*Internal References.*—S.S. Act title IV, part D and §§205 and 1631(e) and (f) catchlines have footnotes referring to P.L. 95-630.]

P.L. 96-223, Approved April 2, 1980 (94 Stat. 229)

Crude Oil Windfall Profit Tax Act of 1980

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ALLOCATION OF NET REVENUES FROM WINDFALL PROFIT TAX TO CERTAIN USES

Sec. 102. [26 U.S.C. 4986 note] (a) SEPARATE ACCOUNT IN TREASURY ESTABLISHED.—The net revenues from the windfall profit tax for each fiscal year beginning after September 30, 1980, and before October 1, 1990, are hereby allocated for accounting purposes to a separate account in the Treasury to be known as the Windfall Profit Tax Account (hereinafter in this section referred to as the "Account").

(b) SPECIFIED USES FOR AMOUNTS IN THE ACCOUNT.—

(1) BASIC NET REVENUES.—In the case of the amount of basic net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	60
Low-income assistance	25
Energy and transportation programs	15

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[24] P.L. 101-73, §943, added subsection (b).

(2) ADDITIONAL NET REVENUES.—In the case of the amount of additional net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	66 2/3
Low-income assistance	33 1/3

(3) SPECIAL RULE FOR LOW-INCOME ASSISTANCE FOR 1982 AND SUBSEQUENT YEARS.—In the case of any amount allocated under paragraph (1) to the subaccount for low-income assistance for the fiscal year beginning October 1, 1981, or any subsequent fiscal year—

(A) 50 percent shall be allocated to a program to assist AFDC and SSI recipients under the Social Security Act, and

(B) 50 percent shall be allocated to a program of emergency energy assistance.

(c) NET REVENUES DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "net revenues of the windfall profit tax" means, for any fiscal year, the amount which the Secretary estimates to be the excess of—

(A) the gross revenues from the tax imposed by section 4986 for the fiscal year, over

(B) the sum of —

(i) the refunds of and other adjustments to such tax for such fiscal year, plus

(ii) the decrease in the income taxes imposed by chapter 1 resulting from the tax imposed by section 4986.

For purposes of subparagraph (A), there shall not be taken into account any revenue attributable to an economic interest in crude oil held by the United States.

(2) BASIC NET REVENUES.—The term "basic net revenues" means the estimated net revenues which would result for any period under the assumptions for such period which were made in enacting the Crude Oil Windfall Profit Tax Act of 1980.

(3) ADDITIONAL NET REVENUES.—The term "additional net revenues" means for any period the net revenues in excess of the basic net revenues for such period.

(d) PRESIDENT TO PROPOSE ALLOCATION OF NET REVENUES.—

(1) IN GENERAL.—The President shall propose for each fiscal year to which this section applies an allocation of the net revenues among the uses set forth in subsection (b).

(2) TIME AND MANNER FOR PROPOSING.—Except for the fiscal year beginning October 1, 1980, the proposal for each fiscal year shall be contained in the annual budget for such fiscal year. The proposal for the fiscal year beginning October 1, 1980, shall be submitted by the President within 90 days after the date of the enactment of this Act.

(e) REPORTS.—The Secretary of the Treasury shall report to the Congress not later than January 1 of 1982 and of each calendar year thereafter before 1992—

(1) the net revenues derived from the windfall profit tax for the fiscal year ending on September 30 of the preceding year, and

(2) the actual disposition for such fiscal year of such revenues among the uses specified in subsection (b).

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[*Internal References.*—S.S. Act titles IV, part A and XVI (SSI) have footnotes referring to P.L. 96-223.]

P.L. 96-265, Approved June 9, 1980 (94 Stat. 441)

Social Security Disability Amendments of 1980

Sec. 1. [42 U.S.C. 1305 note] This Act may be cited as the "Social Security Disability Amendments of 1980".

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Sec. 201. * * *

(e) [42 U.S.C. 1382h note] The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act.

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AUTHORITY FOR DEMONSTRATION PROJECTS

SEC. 505. (a) [42 U.S.C. 1310 note] (1) The Secretary of Health and Human Services shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of (A) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled beneficiaries and (B) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, earlier referral of beneficiaries for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation), to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act.

(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally.

(3) In the case of any experiment or demonstration project under paragraph (1) which is initiated before June 10, 1993[1], the Secretary may waive compliance with the benefit requirements of titles II and XVIII of the Social Security Act insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Secretary to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Secretary to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

(4) On or before June 9 in 1986 and each of the succeeding years through 1992[2], the Secretary shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Secretary may consider appropriate.

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(c) [42 U.S.C. 1310 note] The Secretary shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990) no later than October 1, 1993[3].

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[*Internal References.*—S.S. Act §§201(k) and 215(i) cite the Social Security Disability Amendments of 1980 and S.S. Act titles II and XVIII and §§223, 1110, and 1619 catchlines and §1616(c) have footnotes referring to P.L. 96-265. P.L. 93-66, §212(a) has a footnote referring to P.L. 96-265.]

P.L. 96-272, Approved June 17, 1980 (94 Stat. 500)
Adoption Assistance and Child Welfare Act of 1980

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[1] P.L. 101-239, §10103(a)(1), struck out "1990" and substituted "1993".
[2] P.L. 101-239, §10103(a)(2), struck out "each of the years 1986, 1987, 1988, and 1989" and substituted "1986 and each of the succeeding years through 1992".
[3] P.L. 101-508, §5120(f), amended subsection (c) in its entirety.

SEC. 102.

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(e) [42 U.S.C. 672 note] The Secretary of Health, Education, and Welfare, within three months after the close of each fiscal year, shall submit to the Congress a full and complete report on the number of children placed in foster care pursuant to voluntary placement agreements under sections 408 and 472 of the Social Security Act and on the reasons for such placements together with a description of the extent to which such placements have contributed to the achievement of the objectives of this title, including such recommendations as he may deem appropriate with respect to the continuation (in such section 472) of authority to make Federal payments for dependent children voluntarily placed in foster care.

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SEC. 103.

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(d) [42 U.S.C. 622 note] Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act was not the agency designated pursuant to section 402(a)(3) of that Act, such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title, such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act.

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SEC. 306.

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(b) [42 U.S.C. 1320b-2 note] * * *

(2) In the case of claims filed prior to the date of enactment of this Act on account of expenditures described in section 1132 of the Social Security Act made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act.

(c) [42 U.S.C. 1320b-2 note] Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.

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SEC. 310.

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(b)(1) [42 U.S.C. 1396a note] (A) For purposes of section 1902(a)(10)(A) of the Social Security Act, any individual who, prior to the date of enactment of this Act and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act, or was eligible for and received supplemental security income benefits under title XVI of such Act (or a supplementary payment described in section 13(c) of Public Law 93-233), and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, not occurred.

(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an "informed election" (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

(ii) The term "informed election" means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the "Administrator") with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.

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[*Internal References.*—S.S. Act §422(b) cites the Adoption Assistance and Child Welfare Act of 1980 and §1927(a) cites Public Law 96-272 and S.S. Act §§472 and 1132 catchlines and §471(a) have footnotes referring to P.L. 96-272.]

P.L. 96-422, Approved October 10, 1980 (94 Stat. 1799)

Refugee Education Assistance Act of 1980

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AUTHORITIES FOR OTHER PROGRAMS AND ACTIVITIES

Sec. 501. [8 U.S.C. 1522 note] (a)(1) The President shall exercise authorities with respect to Cuban and Haitian entrants which are identical to the authorities which are exercised under chapter 2 of title IV of the Immigration and Nationality Act. The authorizations provided in section 414 of that Act shall be available to carry out this section without regard to the dollar limitation contained in section 414(a)(2).

(2) Any reference in chapter III of title I of the Supplemental Appropriations and Rescission Act, 1980, to section 405(c)(2) of the International Security and Development Assistance Act of 1980 or to the International Security Act of 1980 shall be construed to be a reference to paragraph (1) of this subsection.

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(e) As used in this section, the term "Cuban and Haitian entrant" means—

(1) any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) any other national of Cuba or Haiti—

(A) who—

(i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

[*Internal References.*—S.S. Act §§415(f) and 1611(c) cite the Refugee Education Assistance Act of 1980.]

P.L. 96-465, Approved October 17, 1980 (94 Stat. 2071)
Foreign Service Act of 1980

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

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CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

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SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

SEC. 851. [22 U.S.C. 4071] ESTABLISHMENT.—(a) There is hereby established a Foreign Service Pension System.

(b) Except as otherwise specifically provided in this subchapter or any other provision of law, the provisions of chapter 84 of title 5, United States Code, shall apply to all participants in the Foreign Service Pension System and such participants shall be treated in all respects similar to persons whose participation in the Federal Employees' Retirement System provided in that chapter is required.

SEC. 852. [22 U.S.C. 4071a] DEFINITIONS.—As used in this subchapter, unless otherwise specified—

(1) the term "court order" has the same meaning given in section 804(4);

(2) the term "Fund" means the Foreign Service Retirement and Disability Fund maintained by the Secretary of the Treasury pursuant to section 802;

(3) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of a participant under section 856 of this chapter (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 854 to obtain credit under this System for prior civilian or military service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(4) the term "normal cost" means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(5) the term "participant" means a person who participates in the Foreign Service Pension System;

(6) the term "pro rata share" in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number of years during which the former spouse was married to the participant during the service of the participant which is creditable under this chapter is of (B) the total number of years of such service, disregarding extra credit under section 817;

(7) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter based on the service of participants or former participants, over

(B) the sum of—

(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 856 and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 857;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to the contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; and

(8) the term "System" means the Foreign Service Pension System.

SEC. 853. [22 U.S.C. 4071b] PARTICIPANTS.—(a) Except for persons excluded by subsection (b), (c), or (d), all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954[1], who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 803 shall instead be participants in the Foreign Service Pension System.

(b) Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act.

(c) Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under subchapter I, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (determined without regard to any deposit or redeposit requirement under any such subchapter or title, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this subchapter (under regulations issued by the Secretary of State pursuant to section 860).

(d) The Secretary may exclude from the operation of this subchapter any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 306.

SEC. 854. [22 U.S.C. 4071c] CREDITABLE SERVICE.—(a) For purposes of this subchapter, creditable service of a participant includes—

(1) service as a participant after December 31, 1986;

(2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and

(3) except as provided in subsection (b), any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter I (determined without regard to any deposit or redeposit requirement under such subchapter, subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, any requirement that the individual become subject to such subchapter or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter or title).

(b)(1) A participant who has received a refund of retirement deductions under subchapter I with respect to any service described in subsection (a)(3) may not be allowed credit for such service under this subchapter unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) A participant may not be allowed credit under this subchapter for any service described in subsection (a)(3) for which retirement deductions under subchapter I have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 805(d) and regulations issued by the Secretary of State.

(c) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

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[1] P.L. 99-514, §2, provides that any reference to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986.

(1) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

(2) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

(3) a full-time volunteer for a period of service of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service (as determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, United States Code) together with interest determined under regulations issued by the Secretary of State.

(d) Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5, United States Code) or under title III of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which was deducted and withheld from the individual's basic pay under the other retirement system during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

(e) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a contribution (from the appropriation or fund which is used for payment of the salary of the participant) determined under section 857(a) to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit is transferred, be counted as creditable service under any other Government retirement system.

SEC. 855. [22 U.S.C. 4071d] ENTITLEMENT TO ANNUITY.—(a)(1) Any participant may be retired under the conditions specified in section 811 and shall be retired under the conditions specified in sections 812 and 813 and receive benefits under this subchapter.

(2) For the purposes of this subsection—

(A) the term "participant", as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

(B) the term "System", as used in those sections, means the Foreign Service Pension System.

(b)(1) Any participant who retires voluntarily or mandatorily under section 607, 608, 811, 812, or 813 under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System and who has completed at least 5 years as a member of the Foreign Service shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(d)(1) of title 5, United States Code, for all service while a participant in this System and for prior service creditable under this subchapter not otherwise counted as—

(i) a member of the Service,

(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act, or

(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, United States Code, or in the Federal Employees' Retirement System under chapter 84 of title 5, United States Code; and

(B) at the rate stated in section 8415(a) of title 5, United States Code, for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).

(3) Any participant who is involuntarily retired or separated under section 607, 608, or 610 and who would if a participant under subchapter I, become eligible for a refund of contributions or a deferred annuity under subchapter I, shall, in lieu thereof, receive benefits for an involuntary separation under this subchapter.

(4) A disability annuity under this subchapter required to be redetermined under section 8452(b) of title 5, United States Code, or computed under section 8452 (c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection

(b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452(c) and (d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 811 of this Act.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5, United States Code, shall not be subject to section 8415(f)(1) of such title 5 if the former participant has 20 years of service creditable under this subchapter and is at least 50 years of age as of the date on which the annuity is to commence.

(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this subchapter rather than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an "assumed FSRDS annuity" rather than an "assumed CSRS annuity" as stated in such section. For the purpose of this subparagraph, the term "assumed FSRDS annuity" means the amount of the survivor annuity to which the widow or widower would be entitled under subchapter I based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) A participant who is entitled to an immediate annuity under subsection (b) shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5, United States Code, as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Any participant who is separated for cause under section 610 shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

SEC. 856. [22 U.S.C. 4071e] DEDUCTIONS AND WITHHOLDINGS FROM PAY.—(a) The employing agency shall deduct and withhold from basic pay of each participant a percentage of basic pay equal to 7 1/2 percent minus the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1954 (relating to the rate of tax for old age, survivors and disability insurance).

(b) Each participant is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter based on the service of the participant.

(c) Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) shall be entered on individual retirement records.

SEC. 857. [22 U.S.C. 4071f] GOVERNMENT CONTRIBUTIONS.—(a) Each agency employing any participant shall contribute to the Fund the amount computed in a manner similar to that used under section 8423(a) of title 5, United States Code, pursuant to determinations of the normal cost percentage for the Foreign Service Pension System by the Secretary of State.

(b)(1) The Secretary of State shall compute the amount of the supplemental liability of the Fund as of the close of each fiscal year beginning after September 30, 1987. The amount of any such supplemental liability shall be amortized in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the System.

(2) At the end of each fiscal year, the Secretary of State shall notify the Secretary of the Treasury of the amount of the installment computed under this subsection for such year.

(3) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (2) of this subsection for such year.

SEC. 858. [22 U.S.C. 4071g] COST-OF-LIVING ADJUSTMENTS.—Cost-of-living adjustments for annuitants under this System shall be granted under procedures in section 8462 of title 5, United States Code, in the same manner as such adjustments are made for annuitants referred to in subsection (c)(3)(B)(ii) of such section.

SEC. 859. [22 U.S.C. 4071h] GENERAL AND ADMINISTRATIVE PROVISIONS.—(a) The Secretary of State shall administer the Foreign Service Pension System except for matters relating to the Thrift Savings Plan provided in subchapters III and VII of chapter 84 of title 5, United States Code. The Secretary of State shall, with respect to the Foreign Service Pension System, perform the functions and exercise the authority vested in the Office of Personnel Management or the Director of such Office by such chapter 84 and may issue regulations for such purposes.

(b) Determinations of the Secretary of State under the Foreign Service Pension System which, if made by the Office of Personnel Management under chapter 84 of title 5, United States Code, or the Director of such Office, would be appealable to the Merit Systems Protection Board shall, instead, be appealable to the Foreign Service Grievance Board, except that determinations of disability for participants shall be based upon the standards in section 808 (other than the exclusion for vicious habits, intemperance, or willful misconduct) and subject to review in the same manner as under that section.

(c) At least every 5 years, the Secretary of the Treasury shall prepare periodic valuations of the Foreign Service Pension System and shall advise the Secretary of State of (1) the normal cost of the System, (2) the supplemental liability of the System, and (3) the amounts necessary to finance the costs of the System.

SEC. 860. [22 U.S.C. 4071i] TRANSITION PROVISIONS.—The Secretary of State shall issue regulations providing for the transition from the Foreign Service Retirement and Disability System to the Foreign Service Pension System in a manner comparable to the transition of employees subject to subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), to the Federal Employees' Retirement System. For this and related purposes, references made to participation in subchapter III of chapter 83 of title 5, United States Code (the Civil Service Retirement System), the Social Security Act, and the Internal Revenue Code of 1954 shall be deemed to refer to participation in the Foreign Service Pension System or the Foreign Service Retirement and Disability System, as appropriate.

SEC. 861. [22 U.S.C. 4071j] FORMER SPOUSES.—(a)(1)(A) Unless otherwise expressly provided by any spousal agreement or court order governing disposition of benefits under this subchapter, a former spouse of a participant or former participant is entitled, during the period described in subparagraph (B), to a share (determined under paragraph (2)) of all benefits otherwise payable to such participant under this subchapter if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service.

(B) The period referred to in subparagraph (A) is the period which begins on the first day of the month following the month in which the divorce or annulment becomes final and ends on the last day of the month before the former spouse dies or remarries before 55 years of age.

(2) The share referred to in paragraph (1) equals—

(A) 50 percent, if such former spouse was married to the participant throughout the actual years of service of the participant which are creditable under this chapter; or

(B) a pro rata share of 50 percent, if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(4)(A) For purposes of the Internal Revenue Code of 1954, payments to a former spouse under this section shall be treated as income to the former spouse and not to the participant.

(B) Any reduction in payments to a participant or former participant as a result of payments to a former spouse under this subsection shall be disregarded in calculating—

(i) the survivor annuity for any spouse, former spouse, or other survivor under this subchapter, and

(ii) any reduction in the annuity of the participant to provide survivor benefits under this subchapter.

(5) Notwithstanding subsection (a)(1) , in the case of any former spouse of a disability annuitant—

(A) the annuity of the former spouse shall commence on the date the participant would qualify, on the basis of his or her creditable service, for an annuity under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of the annuity of the former spouse shall be calculated on the basis of the annuity for which the participant would otherwise so qualify.

(6)(A) Except as provided in subparagraph (B), any former spouse who becomes entitled to receive any benefit under this subchapter which would otherwise be payable to a participant or former participant shall be entitled to make any election regarding method of payment to such former spouse that such participant would have otherwise been entitled to elect, and the participant may elect an alternate method for the remaining share of such benefits. Such elections shall not increase the actuarial present value of benefits expected to be paid under this subchapter.

(B) A former spouse may not elect a method of payment under subchapter II, chapter 84 of title 5, United States Code, providing for payment of a survivor annuity to any survivor of the former spouse.

(7) The maximum amount payable to any former spouse pursuant to this subsection shall be the difference, if any, between 50 percent of the total benefits authorized to be paid to a former participant by this subchapter, disregarding any apportionment of these benefits to others, and the aggregate amount payable to all others at any one time.

(b)(1) Unless otherwise expressly provided for by any spousal agreement or court order governing survivorship benefits under this subchapter to a former spouse married to a participant or former participant for the periods specified in subsection (a)(1)(A), such former spouse is entitled to a share, determined under subsection (b)(2), of all survivor benefits that would otherwise be payable under this subchapter to an eligible surviving spouse of the participant.

(2) The share referred to in subsection (b)(1) equals—

(A) 100 percent if such former spouse was married to the participant throughout the entire period of service of the participant which is creditable under this chapter; or

(B) a pro rata share of 100 percent if such former spouse was not married to the participant throughout such creditable service.

(3) A former spouse shall not be qualified for any benefit under this subsection if, before the commencement of any benefit, the former spouse remarries before becoming 55 years of age.

(c) A participant or former participant may not make any election or modification of election under section 8417, 8418, or 8433 of title 5, United States Code, or other section relating to the participant's account in the Thrift Savings Plan or annuity under the basic plan that would diminish the entitlement of a former spouse to any benefit granted to the former spouse by this section or in a current spousal agreement.

(d) If a member becomes a participant under this subchapter after qualifying for benefits under subchapter I and, at the time of transfer, has a former spouse entitled to benefits under subchapter I which are determined under section 814 or 815 (as determined by the Secretary of State) and are similar in amount to a pro rata share division under section 814 or 815 and the service of the member as a participant under this subchapter is not recognized in determining that pro rata share, then subsections (a) and (b) of this section shall not apply to such former spouse. Otherwise, subsections (a) and (b) of this section shall apply.

(e) If a participant dies after completing at least 18 months of service or a former participant dies entitled to a deferred annuity, but before becoming eligible to receive the annuity, and such participant or former participant has left with the Secretary of State a spousal agreement promising a share of a survivor annuity under subchapter IV, chapter 84, title 5, United States Code, to a former spouse, such survivor annuity shall be paid under the terms of this subchapter as if the survivor annuity had been ordered by a court.

SEC. 862. [22 U.S.C. 4071k] SPOUSAL AGREEMENTS.—A spousal agreement is any written agreement (properly authenticated as determined by the Secretary of State) between a participant or former participant and his or her spouse or former spouse on file with the Secretary of State. A spousal agreement shall be consistent with the terms of this Act and applicable regulations and, if executed at the time a participant or former participant is currently married, shall be approved by such current spouse. It may be used to fix the level of benefits payable under this subchapter to a spouse or former spouse.

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[*Internal References.*—S.S. Act §§202(b), (c), (e), (f), and (g), and 210(a) cite the Foreign Service Act of 1980.]

P.L. 96-481, Approved October 21, 1980 (94 Stat. 2321)
[Small Business Export Expansion Act of 1980]

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Title II—Equal Access to Justice Act

SEC. 201. [5 U.S.C. 504 note] This title may be cited as the "Equal Access to Justice Act".

FINDINGS AND PURPOSE

SEC. 202. [5 U.S.C. 504 note] (a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

(c) It is the purpose of this title—

(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the "American rule" respecting the award of attorney fees.

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EFFECT ON OTHER LAWS

SEC. 206. [28 U.S.C. 2412 note] (a) Except as provided in subsection (b), nothing in section 2412(d) of title 28, United States Code, as added by section 204(a) of this title, alters, modifies, repeals, invalidates, or supersedes any other provision of Federal law which authorizes an award of such fees and other expenses to any party other than the United States that prevails in any civil action brought by or against the United States.

(b) Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 206(b)(2) of the Social Security Act shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 206(b) of that Act and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.

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EFFECTIVE DATE AND APPLICATION

SEC. 208. [5 U.S.C. 504 note] This title and the amendments made by this title shall take effect of[1] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action.

[*Internal Reference.*—S.S. Act §206(b) has a footnote referring to P.L. 96-481.]

P.L. 96-499, Approved December 5, 1980 (94 Stat. 2599)

Omnibus Reconciliation Act of 1980

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SHORT TITLE; TABLE OF CONTENTS OF TITLE

SEC. 900. [42 U.S.C. 1305 note] This title may be cited as the "Medicare and Medicaid Amendments of 1980".

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[1] As in original. Probably should be "on".

SEC. 952.

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(b) [42 U.S.C. 1395x note] Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.

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CERTIFICATION OF STATE UNEMPLOYMENT LAWS

SEC. 1025. [26 U.S.C. 3304 note] On October 31 of any taxable year after 1980, the Secretary of Labor shall not certify any State, as provided in section 3304(c) of the Internal Revenue Code of 1954, which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the preceding provisions of this subtitle to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

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[*Internal References.*—S.S. Act §1201 catchline and §§303(e) and 1861(v) have footnotes referring to P.L. 96-499.]

P.L. 96-598, Approved December 24, 1980 (94 Stat. 3485)

[Tread Rubber Excise Tax Refunds]

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TREATMENT OF BONNER'S FERRY RESTORIUM UNDER THE SUPPLEMENTARY SECURITY INCOME PROGRAM

SEC. 4. [None assigned.] (a) TREATMENT AS NON-PUBLIC INSTITUTION.—For purposes of title XVI of the Social Security Act, the Boundary County Restorium (popularly known as the Bonner's Ferry Restorium) in Bonner's Ferry, Idaho, shall not be considered a public institution (within the meaning of section 1611(e)(1)(C) of such Act).

(b) EFFECTIVE DATE.—Subsection (a) shall apply to supplemental security income benefits payable under title XVI of the Social Security Act for months beginning with November 1980.

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[*Internal Reference.*—S.S. Act §1611(e) has a footnote referring to P.L. 96-598.]

P.L. 97-35, Approved August 13, 1981 (95 Stat. 483)

Omnibus Budget Reconciliation Act of 1981

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POVERTY LINE

SEC. 652. [42 U.S.C. 9847] (a) The Secretary shall issue annually (or at any shorter interval the Secretary considers to be feasible and desirable) a poverty line which, except as provided in section 645, shall be used as a criterion of eligibility for participation in Head Start programs.[1]

(b)[2] The poverty line shall be determined by the Secretary[3] not more than 30 days after the date on which the necessary Consumer Price Index data become available.

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[1] P.L. 101-501, §121(a), amended subsection (a) in its entirety.

[2] P.L. 101-501, §121(c)(1), struck out subsection (b); §121(c)(2) redesignated subsection (c) and as (b).

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SEC. 673. [42 U.S.C. 9902] For purposes of this subtitle:

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(2) The term "poverty line" means the official poverty line defined by the Office of Management and Budget based on Bureau of the Census data. The Secretary shall revise the poverty line annually (or at any shorter interval the Secretary deems feasible and desirable) which shall be used as a criterion of eligibility in community service block grant programs. The required revision shall be accomplished by multiplying the official poverty line by the percentage change in the Consumer Price Index For All Urban[4] Consumers during the annual or other interval immediately preceding the time at which the revision is made. Whenever the State determines that it serves the objectives of the block grant established by this subtitle the State may revise the poverty line to not to exceed 125 percent of the official poverty line otherwise applicable under this paragraph.

(3) The term "Secretary" means the Secretary of Health and Human Services.

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APPLICATIONS AND REQUIREMENTS

SEC. 2605. [42 U.S.C. 8624]

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(f)(1) Notwithstanding any other provision of law unless enacted in express limitation of this paragraph, the amount of any home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this title shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law, including any law relating to taxation, food stamps, public assistance, or welfare programs.

(2) For purposes of paragraph (1) of this subsection and for purposes of determining any excess shelter expense deduction under section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e))—

(A) the full amount of such payments or allowances shall be deemed to be expended by such household for heating or cooling expenses, without regard to whether such payments or allowances are provided directly to, or indirectly for the benefit of, such household; and

(B) no distinction may be made among households on the basis of whether such payments or allowances are provided directly to, or indirectly for the benefit of, any of such households.

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[*Internal References.*—S.S. Act §§202(i), 501(b), 1902(l) and (m), 1905(p) and (s), 1916(c), 1924(d), and 1925(b) cite the Omnibus Budget Reconciliation Act of 1981, §501(b) cites the Maternal and Child Health Services Block Grant and §402(g) cites the Education Consolidation and Improvement Act of 1981 and S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), 1602(a)(State), and 1924(d) have footnotes referring to P.L. 97-35. P.L. 88-525, §5(e) has a footnote referring to P.L. 97-35.]

P.L. 97-123, Approved December 29, 1981 (95 Stat. 1659)

[Amendments to P.L. 97-35]

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SEC. 3.

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(e) [26 U.S.C. 3121 note] For purposes of applying section 209 of the Social Security Act, section 3121(a) of the Internal Revenue Code of 1954, and section 3231(e) of such

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[3] P.L. 101-508, §121(c)(2), struck out "(c) Revisions required by subsection (a) shall be made and issued" and substituted "(b) The poverty line shall be determined by the Secretary".

[4] P.L. 101-501, §408, struck out "for all Urban" and substituted "For All Urban".

Code with respect to the parenthetical matter contained in section 209(b)(2)[1] of the Social Security Act or section 3121(a)(2)(B) of the Internal Revenue Code of 1954, or with respect to section 3231(e)(4) of such Code (as the case may be), payments under a State temporary disability law shall be treated as remuneration for service.

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[*Internal Reference.*—S.S. Act §209(a)(2)(A) has a footnote referring to P.L. 97-123.]

P.L. 97-248, Approved September 3, 1982 (96 Stat. 324)

Tax Equity and Fiscal Responsibility Act of 1982

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ELIMINATION OF PRIVATE ROOM SUBSIDY

SEC. 111. (a) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act, not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

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SEC. 114. [42 U.S.C. 1395mm note]

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(c) * * *

(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act (as amended by this Act, other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act (as amended by this Act), but (except as provided in subparagraph (A))—

(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

(ii) no payment may be made under section 1876 of such Act with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act (as amended by this Act).

(C) For purposes of this paragraph, the term "current, nonrisk medicare enrollee" means, with respect to an organization, an individual who on the initial effective date—

(i) is enrolled with that organization under an existing cost contract, and

(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act.

(D) For purposes of this paragraph, the term "new medicare enrollee" means, with respect to an organization, an individual who—

(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act, and

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[1] P.L. 98-21, §324(c)(3)(A), redesignated §209(b)(2) as §209(b)(1).

P.L. 101-239, §10208(d)(1)(J), redesignated subsection (b) of §209 as paragraph (2) of §209(a) and §10208(d)(1)(B), redesignated §209(b)(1) as §209(a)(2)(A).

(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title.

(E) The preceding provisions of this paragraph shall not to[1] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

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(d) The Secretary of Health and Human Services shall conduct a study of the additional benefits selected by eligible organizations pursuant to section 1876(g)(2) of the Social Security Act, as amended by subsection (a) of this section. The Secretary shall report to the Congress within 24 months of the initial effective date (as defined in subsection (c)(4)) with respect to the findings and conclusions made as a result of such study.

(e) The Secretary of Health and Human Services shall conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act. Such study may be coordinated with the study provided for under section 2178(d) of the Omnibus Budget Reconciliation Act of 1981. In conducting such study, the Secretary shall place special emphasis on the quantity and quality of medical care provided in such organizations and the quality of such care when provided on a fee-for-service basis. The Secretary shall submit an interim report to the Congress, within two years after the initial effective date (as defined in subsection (c)(4)), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

SEC. 115. * * *

(b) [42 U.S.C. 1395y note] No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) or section 1903(i)(5) of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981, or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act and specifically states that such provision is to supersede this section.

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AUDIT AND MEDICAL CLAIMS REVIEW

SEC. 118. [42 U.S.C. 1395h note] In addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act, there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments, consistent with the provisions of sections 1816 and 1842 of the Social Security Act.

PRIVATE SECTOR REVIEW INITIATIVE

SEC. 119. [42 U.S.C. 1395cc note] (a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

(b) [42 U.S.C. 1395cc note] Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act, such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title, from collecting any payments from beneficiaries unless otherwise provided under such title.

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[1] As in original.

MEDICARE COVERAGE OF FEDERAL EMPLOYEES

SEC. 121. [None assigned.] For provisions providing certain employees of the United States and instrumentalities thereof with entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act, see section 278 of this Act.

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SEC. 122. * * *

(i) [42 U.S.C. 1395b-1 note] (1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

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SEC. 141. [42 U.S.C. 1305 note] This subtitle may be cited as the "Peer Review Improvement Act of 1982".

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EXCLUSION FROM INCOME

SEC. 159. [42 U.S.C. 602 note] Notwithstanding any other provision of law, payments which are made, under a statutorily established State program, to meet certain needs of children receiving aid under the State's plan approved under part A of title IV of the Social Security Act, if—

(1) the payments are made to such children by the State agency administering such plan, but are made without Federal financial participation (under section 403(a) of such Act or otherwise), and

(2) the State program has been continuously in effect since before January 1, 1979,

shall be excluded from the income of such children and their families for purposes of section 402(a)(17) of such Act, and for all the other purposes of such part A and of such plan, effective on the date of the enactment of this Act.

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SEC. 278. * * *

(d) [42 U.S.C. 426 note] TRANSITIONAL PROVISIONS.—

(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act, in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be "employment" (as defined for purposes of title II of such Act), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act.

(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act solely by reason of paragraph (1) of this subsection,

(B) the additional administrative expenses resulting or expected to result therefrom, and

(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.

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SHORT TITLE

SEC. 601. [26 US.C. 3304 note] This subtitle may be cited as the "Federal Supplemental Compensation Act of 1982".

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FINANCING PROVISIONS

Sec. 604. [26 U.S.C. 3304 note] (a)(1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this subtitle.

(2) The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subtitle. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as established by section 905 of the Social Security Act) to the account of such State in the Unemployment Trust Fund.

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(c) There are hereby authorized to be appropriated from the general fund of the Treasury, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act) in meeting the costs of administration of agreements under this subtitle.

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[*Internal References.*—S.S. Act §1153(a) cites the Peer Review Improvement Act of 1982 and S.S. Act titles III, IV, part A, XVIII and XVIII, part A and §§202, 223, 226, 226A, 905, 1815, 1816, 1842, 1866, 1871, 1876, and 1879 catchlines and §§402(a); 1861(v); 1862(c); and 1876(g) have footnotes referring to P.L. 97-248. P.L. 90-248, §402 catchline has a footnote referring to P.L. 97-248.]

P.L. 97-253, Approved September 8, 1982 (96 Stat. 763)
Omnibus Budget Reconciliation Act of 1982

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RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

Sec. 307. [5 U.S.C. 8332 note] (a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act[1] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors' insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act) for service referred to in section 210(l) of such Act (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act) for each such year, and

(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act) and all self-employment income (within the meaning of section 211(b) of such Act) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1)) for each such year.

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[1] September 8, 1982.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

(d) For purposes of this section, the term "determination month" means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act (or would be entitled to such benefits upon filing application therefor); or

(2) October 1982, in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section.

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[*Internal Reference.*—S.S. Act §1106 catchline has a footnote referring to P.L. 97-253.]

P.L. 97-300, Approved October 13, 1982 (96 Stat. 1322)

Job Training Partnership Act

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DEFINITIONS

Sec. 4. [29 U.S.C. 1503] For the purposes of this Act, the following definitions apply:

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(2) The term "administrative entity" means the entity designated to administer a job training plan under section 103(b)(1)(B).

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(5) The term "community-based organizations" means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, 70,001, Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973), agencies serving youth, agencies serving the handicapped, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and organizations serving nonreservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

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(21) The term "Secretary" means the Secretary of Labor.

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ESTABLISHMENT OF PRIVATE INDUSTRY COUNCIL

Sec. 102. [29 U.S.C. 1512] (a) There shall be a private industry council for every service delivery area established under section 101, to be selected in accordance with this subsection. Each council shall consist of—

(1) representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility; and

(2) representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

(b) The Chairman of the council shall be selected from among members of the council who are representatives of the private sector.

(c)(1)(A) Private sector representatives on the council shall be selected from among individuals nominated by general purpose business organizations after consulting with, and receiving recommendations from, other business organizations in the service delivery area. The number of such nominations shall be at least 150 percent of the number of individuals to be appointed under subsection (a)(1). Such nominations, and the individuals selected from such nominations, shall reasonably represent the industrial and demographic composition of the business community. Whenever possible, at least one-half of such business and industry representatives shall be representatives of small business, including minority business.

(B) For the purpose of this paragraph, the term—

(i) "general purpose business organizations" means organizations which admit to membership any for-profit business operating within the service delivery area; and

(ii) "small business" means private for-profit enterprises employing 500 or fewer employees.

(2) Education representatives on the council shall be selected from among individuals nominated by local educational agencies, vocational education institutions, institutions of higher education, or general organizations of such agencies or institutions, and by private and proprietary schools or general organizations of such schools, within the service delivery area.

(3) The remaining members of the council shall be selected from individuals recommended by interested organizations. Labor representatives shall be recommended by recognized State and local labor organizations or appropriate building trades councils.

(d)(1) In any case in which there is only one unit of general local government with experience in administering job training programs within the service delivery area, the chief elected official of that unit shall appoint members to the council from the individuals nominated or recommended under subsection (c).

(2) In any case in which there are two or more such units of general local government in the service delivery area, the chief elected officials of such units shall appoint members to the council from the individuals so nominated or recommended in accordance with an agreement entered into by such units of general local government. In the absence of such an agreement, the appointments shall be made by the Governor from the individuals so nominated or recommended.

(e) The initial number of members of the council shall be determined—

(1) by the chief elected official in the case described in subsection (d)(1),

(2) by the chief elected officials in accordance with the agreement in the case described in subsection (d)(2), or

(3) by the Governor in the absence of such agreement.

Thereafter, the number of members of the council shall be determined by the council.

(f) Members shall be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council shall be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(g) The Governor shall certify a private industry council if the Governor determines that its composition and appointments are consistent with the provisions of this subsection. Such certification shall be made or denied within 30 days after the date on which a list of members and necessary supporting documentation are submitted to the Governor. When the Governor certifies the council, it shall be convened within 30 days by the official or officials who made the appointments to such council under subsection (d).

(h) In any case in which the service delivery area is a State, the State job training coordinating council or a portion of such council may be reconstituted to meet the requirements of this section.

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SEC. 106. [29 U.S.C. 1516] PERFORMANCE STANDARDS.

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(e)

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(2) The Secretary shall—

(A) provide improved information and technical assistance on performance standards adjustments;

(B) collect data that better specifies hard-to-serve individuals and long-term welfare dependency; and

(C) provide guidance on setting performance goals at the service provider level that encourages increased service to the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.

The Secretary shall also reexamine performance standards to ensure that such standards provide maximum flexibility in serving the hard-to-serve, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income.

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GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN

SEC. 121. [29 U.S.C. 1531] (a)(1) The Governor shall annually prepare a statement of goals and objectives for job training and placement programs within the State to assist in the preparation of the plans required under section 104 of this Act and section 8 of the Act of June 6, 1933 (known as the Wagner-Peyser Act).

(2) Any State seeking financial assistance under this Act shall submit a Governor's coordination and special services plan for two program years to the Secretary describing the use of all resources provided to the State and its service delivery areas under this Act and evaluating the experience over the preceding two years.

(b)(1) The plan shall establish criteria for coordinating activities under this Act (including title III) with programs and services provided by State and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, programs for the homeless, postsecondary institutions, economic development agencies, and such other agencies as the Governor determines to have a direct interest in employment and training and human resource utilization within the State. Such criteria shall not affect local discretion concerning the selection of eligible participants or service providers in accordance with the provisions of sections 107 and 203.

(2) The plan shall describe the projected use of resources, including oversight and support activities, priorities and criteria for State incentive grants, and performance goals for State supported programs.

(3) The State plan shall include a description of the manner in which the State will encourage the successful carrying out of—

(A) training activities for eligible individuals whose placement is the basis for the payment to the State of the incentive bonus authorized by title V; and

(B) the training services, outreach activities, and preemployment supportive services furnished to such individuals.

(4) The Governor shall report to the Secretary the adjustments made in the performance standards and the factors that are used in making the adjustments.

(5) If major changes occur in labor market conditions, funding, or other factors during the two-year period covered by the plan, the State shall submit a modification to the Secretary describing these changes.

(c) Governor's coordination and special services activities may include—

(1) making available to service delivery areas, with or without reimbursement and upon request, appropriate information and technical assistance to assist in developing and implementing plans and programs;

(2) carrying out special model training and employment programs and related services (including programs receiving financial assistance from private sources);

(3) providing programs and related services for offenders, homeless individuals and other individuals whom the Governor determines require special assistance;

(4) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(5) providing training opportunities in the conservation and efficient use of energy, and the development of solar energy sources as defined in section 3 of the Solar Energy Research, Development and Demonstration Act of 1974;

(6) industry-wide training;

(7) activities under title III of this Act;

(8) developing and providing to service delivery areas information on a State and local area basis regarding economic, industrial, and labor market conditions;

(9) providing preservice and inservice training for planning, management, and delivery staffs of administrative entities and private industry councils, as well as contractors for State supported programs; and

(10) providing statewide programs which provide for joint funding of activities under this Act with services and activities under other Federal, State, or local employment-related programs, including Veterans' Administration programs.

(d) A Governor's coordination and special services plan shall be approved by the Secretary unless the Secretary determines that the plan does not comply with specific provisions of this Act.

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SEC. 202. [29 U.S.C. 1602] WITHIN STATE ALLOCATION.

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(b)

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(3)(A) Six percent of such allotment of each State for each fiscal year shall be available to carry out subparagraph (B) of this paragraph.

(B) The amount reserved under subparagraph (A) of this paragraph shall be used by the Governor to provide incentive grants for programs exceeding performance standards and incentives for serving increased numbers of hard-to-serve individuals, particularly long-term welfare recipients, including title IV of the Social Security Act, relating to aid to families with dependent children, and title XVI of such Act, relating to supplemental security income. The incentive grants made under this subparagraph shall be distributed among service delivery areas within the State exceeding their performance standards in an equitable proportion based on the degree by which the service delivery areas exceed their performance standards. If the full amount reserved under subparagraph (A) of this paragraph is not needed to make incentive grants under this subparagraph, the Governor shall use the amount not so needed for technical assistance to service delivery areas in the State. Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than two program years to develop and implement a data collection system to track the postprogram experience of participants under this part.

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SEC. 501. [29 U.S.C. 1791] STATEMENT OF PURPOSE.

It is the purpose of this title to entitle each State to the payment of a bonus for the successful job placement of certain employable dependent individuals.

SEC. 502. [29 U.S.C. 1791a] DEFINITIONS.

For the purpose of this title—

(1) the term "welfare assistance" means—

(A) cash payments made pursuant to part A of title IV of the Social Security Act (relating to the aid to families with dependent children program);

(B) general welfare assistance to Indians, as provided pursuant to the Act of November 2, 1921 (25 U.S.C. (13)), commonly referred to as the Snyder Act; or

(C) cash assistance and medical assistance for refugees made available pursuant to section 412(e) of the Immigration and Nationality Act;

(2) the term "disability assistance" means benefits offered pursuant to title XVI of the Social Security Act (relating to the supplemental security income program);

(3) the term "long-term recipient" means an individual who has received the benefits described in paragraphs (1) and (2) for 24 months during the 28-month period immediately preceding application for programs offered under this title;

(4) the term "continuous employment" means gainful employment under which wages or salaries are reportable for unemployment insurance purposes, and such wages or salaries are earned during a total of 4 out of 5 consecutive calendar quarters;

(5) the term "supported employment" has the meaning given such term by section 7(18) of the Rehabilitation Act of 1973; and

(6) the term "Federal contribution" means the amount of the Federal component of cash payments to individuals within the participating State under the programs described in this section, including part A of title IV of the Social Security Act.

SEC. 503. [29 U.S.C. 1791b] ELIGIBILITY FOR INCENTIVE BONUSES.

(a) In General.—An individual shall be eligible to be counted for the purpose of this title if—

(1) the individual is—

(A) an eligible long-term recipient described in subsection (b);

(B) an eligible young recipient described in subsection (c);

(C) an eligible blind or disabled recipient described in subsection (d); or

(D) an eligible young blind or disabled recipient described in subsection (e); and

(2) the individual has met the requirements of section 504.

(b) Long-Term Recipient.—An eligible long-term recipient is an individual who—

(1) is a long-term recipient of welfare assistance;

(2) is the head of a household; and

(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(c) Young Recipient.—An eligible young recipient is an individual who—

(1) is receiving welfare assistance at the time determination of eligibility is made for programs under this Act;

(2) is the head of a household;

(3) has not attained 22 years of age;

(4) has not completed secondary school or its equivalent; and

(5) had no marketable or significant work experience during the year preceding determination of eligibility for programs under this Act.

(d) Blind or Disabled Recipient.—An eligible blind or disabled recipient is an individual who—

(1) is blind or disabled;

(2) is a long-term recipient of disability assistance; and

(3) had no marketable or significant work experience during the year preceding determination of eligibility for programs offered under this Act.

(e) Young Blind or Disabled Recipient.—An eligible young blind or disabled recipient is an individual who—

(1) is blind or disabled;

(2) is receiving disability assistance at the time determination of eligibility is made for programs under this Act;

(3) has not attained 22 years of age; and

(4) had no marketable or significant work experience during the year preceding such determination of eligibility.

SEC. 504. [29 U.S.C. 1791c] ADDITIONAL ELIGIBILITY REQUIREMENTS.

(a) In General.—An individual described in section 503 may not be considered eligible to be counted for the purpose of payment of an incentive bonus under this title unless such individual—

(1) has successfully participated in education, training, or other activities offered under this Act;

(2) has been placed in (A) unsubsidized, continuous employment or (B) supported employment following such participation;

(3) receives from such employment a wage or income which is greater than or equal to such individual's placement bonus base; and

(4) no longer receives cash benefits provided under the assistance programs described in paragraphs (1) and (2) of section 502, unless receipt of such benefits—

(A) is limited to 1 calendar quarter (or an equivalent period) during the 5 calendar quarters used to determine continuous employment; and

(B) is caused by a termination of employment due to—

(i) a layoff or permanent closure of a plant or facility;

(ii) a relocation of Federal facilities; or

(iii) a natural disaster.

(b) Qualified Earnings.—An individual shall be considered to be earning a wage or income which meets the requirements of subsection (a)(3) if, during a period of continuous employment, the individual earns an income reportable for unemployment insurance purposes and does not receive cash benefits under the programs described in section 502.

(c) Educational Requirements.—An individual described in section 503(c) or (e) shall be considered to have met the requirements of subsection (a)(1) if the individual no longer receives welfare assistance and—

(1) reenrolls in secondary school or its equivalent and matriculates to the next grade level or its equivalent within 1 year of enrollment;

(2) enrolls in an accredited vocational or technical school not less than full time and is making satisfactory progress in a course of study which can reasonably be expected to lead to employment; or

(3) obtains the equivalent of a secondary school diploma within 12 months following the individual's determination of eligibility for programs offered under this title.

SEC. 505. [29 U.S.C. 1791d] AMOUNT OF INCENTIVE BONUS.

(a) In General.—The amount of the incentive bonus paid to each State shall be equal to the sum of—

(1) 75 percent of the placement bonus base for each successful placement in employment of an individual described in section 503;

(2) 75 percent of the placement bonus base for the second continuous year of such employment; and

(3) 75 percent of the placement bonus base for the third continuous year of such employment,

in excess of the number of such placements made in program year 1987 or such other base period as provided by agreement between the Governor and the Secretary.

(b) Placement Bonus Base for Purposes of Section 503(b) and (c).—For the purpose of this section, the placement bonus base—

(1) for an individual who qualifies under section 503(b) is equal to the sum of the Federal contribution to amounts received by the individual and the family of such individual under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, or under section 412(e) of the Immigration and Nationality Act, relating to cash assistance and medical assistance to refugees, or both, for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

(2) for an individual who qualifies under section 503(c) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(1)(A) for the prior year, under part A of title IV of the Social Security Act, relating to the aid to families with dependent children program, or section 412(e) of the Immigration and Nationality Act relating to cash assistance and medical assistance to refugees.

(c) Placement Bonus Base for Purposes of Section 503(d) and (e).—For the purpose of this section, the placement bonus base—

(1) for an individual who qualifies under section 503(d) is equal to the sum of the Federal contribution to amounts received by the individual under title XVI of the Social Security Act relating to supplemental security income for the 2 fiscal years prior to the determination made under section 503 divided by 2; and

(2) for an individual who qualifies under section 503(e) shall be the annual amount to which such individual would have been entitled for 1 year at the time of the determination of eligibility of the individual, if such individual has not received the benefits described in section 502(2) for the prior year under title XVI of the Social Security Act, relating to supplemental security income.

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[*Internal References.*—S.S. Act §§402(a), 407(d), 483(a) and (c), and 485(a), (c), and (e) cite the Job Training Partnership Act and S.S. Act titles IV, XVI (SSI), and XIX catchlines and §483(a) have footnotes referring to P.L. 97-300.]

P.L. 97-362, Approved October 25, 1982 (96 Stat. 1726)

Miscellaneous Revenue Act of 1982

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Sec. 202. COMPENSATION PAID TO EX-SERVICE MEMBERS CHARGED TO DEPARTMENT OF DEFENSE.

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(b) **Effective Date.**—

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(2) [5 U.S.C. 8509 note] **Treatment of previously appropriated funds.**—All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which do not

have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.

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[*Internal Reference.*—S.S. Act §909 catchline has a footnote referring to P.L. 97-362.]

P.L. 97-377, Approved December 21, 1982 (96 Stat. 1830)
[Further Continuing Appropriations for Fiscal Year 1983]

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SEC. 156. [42 U.S.C. 402 note] (a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month or who meets the requirements for entitlement to the equivalent of such benefit provided under section 412(a) of title 38, United States Code; and

(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 412(a) of title 38, United States Code, by reason of having such child (or any other child of such member or former member) in her care.

(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35; 95 Stat. 841)); and

(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841)), disregarding any adjustments made under section 215(i) of the Social Security Act after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section.

(e)(1) Unless otherwise provided by law—

(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 411 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 411 of such title are increased above the rates as in effect immediately before such increase; and

(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 1731(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 1731(b) of such title are increased above the rates as in effect immediately before such increase.

(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the "Retired Pay, Defense" account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

(h) The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

(i) For the purposes of this section:

(1) The term "head of the agency" means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

(2) The terms "active military, naval, or air service" and "service-connected" have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.

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[*Internal Reference.*—S.S. Act §202 catchline has a footnote referring to P.L. 97-377.]

P.L. 97-404, Approved December 31, 1982 (96 Stat. 2026)
[Job Training Partnership Act, Amendments]

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SEC. 6. [42 U.S.C. 602 note] The amendments made by this Act shall not be construed as affecting the term "originally enacted" as applied to the Job Training Partnership Act in section 402(a)(8)(A)(v) of the Social Security Act as amended by section 503(a) of the Act.

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[*Internal Reference.*—S.S. Act §402(a) has a footnote referring to P.L. 97-404.]

P.L. 97-448, Approved January 12, 1983 (96 Stat. 2365)
Technical Corrections Act of 1982

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SEC. 309.

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(d) [42 U.S.C. 1320c note] In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 and part B of title XI of the Social Security Act as amended by such subtitle.

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[*Internal Reference.*—S.S. Act title XI, part B catchline has a footnote referring to P.L. 97-448.]

P.L. 97-455, Approved January 12, 1983 (96 Stat. 2497)
[Temporary Payment of Disability Benefits]

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SEC. 5. [42 U.S.C. 405 note] CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES.

The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act (as added by section 4 of this Act). For this purpose the Secretary shall—

(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting *all* evidence that relates to the question before the Secretary or the State agency at such reconsiderations.

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[*Internal Reference.*—S.S. Act §205 catchline has a footnote referring to P.L. 97-455.]

P.L. 98-4, Approved March 11, 1983 (97 Stat. 7)
Payment-in-Kind Tax Treatment Act of 1983

SECTION 1. [26 U.S.C. 61 note] SHORT TITLE.

This Act may be cited as the "Payment-in-Kind Tax Treatment Act of 1983".

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SEC. 3. [26 U.S.C. 61 note]

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(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

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(4) title II of the Social Security Act (relating to Federal old-age, survivors, and disability insurance benefits).

* * * * * * *

[*Internal References.*—S.S. Act title II and §211(b) catchlines have footnotes referring to P.L. 98-4.]

P.L. 98-21, Approved April 20, 1983 (97 Stat. 65)
Social Security Amendments of 1983

SEC. 101. * * *

(e) [42 U.S.C. 410 note] Nothing in this Act shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.

SEC. 102. * * *

(d) [26 U.S.C. 3121 note] The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1954 may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section apply.

(e)(1) [42 U.S.C. 414 note] If any individual—

(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section, and

(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act) for all of the purposes of title II of such Act.

(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.

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SEC. 111. * * *

(d) [42 U.S.C. 415 note] Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act, the "base quarter" (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a "cost-of-living computation quarter" within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a "cost-of-living computation quarter" under paragraph (2)(A) of such section) for all of the purposes of such Act as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).

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SEC. 121. * * *

(e) [42 U.S.C. 401 note] TRANSFERS TO TRUST FUNDS.—

(1) IN GENERAL.—There are hereby appropriated to each payor fund amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1954 which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) to payments from such payor fund.

(2) TRANSFERS.—The amounts appropriated by paragraph (1) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(3) DEFINITIONS.—For purposes of this subsection—

(A) PAYOR FUND.—The term "payor fund" means any trust fund or account from which payments of social security benefits are made.

(B) SOCIAL SECURITY BENEFITS.—The term "social security benefits" has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1954.

(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

(B) the anticipated operation of this subsection during the next 5 years.

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SEC. 151.

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(b) * * *

(3) [42 U.S.C. 429 note] * * *

(B)(i) Within thirty days after the date of the enactment of this Act, the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.

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SEC. 305.

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(e) [42 U.S.C. 428 note] The Secretary shall increase the amounts specified in section 228 of the Social Security Act, as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.

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SEC. 309.

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(q) * * *

(2) [42 U.S.C. 426 note] For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act, as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted, under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.

SEC. 310. [42 U.S.C. 402 note]

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(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.

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SEC. 601. (a) * * *

(3) [42 U.S.C. 1395ww note] It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.

* * * * * * *

(g) [42 U.S.C. 1395ww note] In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act, the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.

SEC. 602.

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(k) [42 U.S.C. 1395y note] (1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.

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REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS

SEC. 603. (a) [42 U.S.C. 1395ww note] * * *

(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1989) on the impact, of the payment methodology under section 1886(d) of the Social Security Act during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

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(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.

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(b) [42 U.S.C. 1395b-1 note] * * *

(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act approved under section 402(a) of the Social Security Amendments of 1967 or section 222(a) of the Social Security Amendments of 1972, which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.

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(d) [42 U.S.C. 1395b-1 note] The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.

SEC. 604. [42 U.S.C. 1395ww note]

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(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of the Social Security Act (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act (as in effect before the date of the enactment of this Act) for items and services furnished before that period.

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[*Internal References.*—S.S. Act §§215(a) and (i), 217(g), 218(f), 229(b), 1618(e), 1634(b), 1845(b), and 1886(c) and (e) cite the Social Security Amendments of 1983 and S.S. titles II and XVIII and §§201, 202, 228, 1862, and 1886 catchlines and §§226(e), 1862(a), 1866(a), and 1886(d) have footnotes referring to P.L. 98-21.]

P.L. 98-64, Approved August 2, 1983 (97 Stat. 365)
[Per Capita Payments to Indians]

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SEC. 2. [25 U.S.C. 117b] (a) Funds distributed under this Act shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466)[1], as amended.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 98-64.]

P.L. 98-118, Approved October 11, 1983 (97 Stat. 803)

[Extension of "Federal Supplemental Compensation Act of 1982",
P.L. 97-248, Title VI, Subtitle A]

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SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

SEC. 4. [26 U.S.C. 3121 note] Notwithstanding section 101(d) of the Social Security Amendments of 1983, the amendments made by section 101(c) of such Act shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1954.

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[*Internal Reference.*—S.S. Act §209(h) has a footnote referring to P.L. 98-118.]

P.L. 98-168, Approved November 29, 1983 (97 Stat. 1105)

[Amendments to Title 5, U.S.C.]

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SEC. 201. [5 U.S.C. 8331 note] This title may be cited as the "Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983".

STATEMENT OF POLICY

SEC. 202. [5 U.S.C. 8331 note] It is the policy of the Government—

(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act) or January 1, 1987, whichever is earlier;

(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act until a new Government retirement system covering such employees and officers is established;

(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

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[1] See P.L. 93-134, §7, (this volume).

(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

DEFINITIONS

SEC. 203. [5 U.S.C. 8331 note] (a) For the purposes of this title—

(1) the term "covered employee" means any individual whose service is covered service;

(2) the term "covered retirement system" means—

(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President;

(3) the term "covered service" means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954 by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67); and

(4) the term "new Government retirement system" means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987, and (B) takes effect on or before January 1, 1987.

(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

CONTRIBUTION ADJUSTMENTS

SEC. 204. [5 U.S.C. 8331 note] (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

(1) section 8334 of title 5, United States Code;

(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1987. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987, as the case may be, and is not subject to a new Government retirement system.

(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

SEC. 205. [5 U.S.C. 8331 note] (a) For purposes of this section—

(1) the term "contribution deficiency", when used with respect to a covered retirement system, means the excess of—

(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

(2) the term "appropriate agency head" means—

(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.);

(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987, the appropriate agency head—

(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

SEC. 206. [5 U.S.C. 8331 note] (a) For the purposes of this section, the term "interim covered service" means covered service to which section 204(a) applies.

(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act to the annuitant and is attributable to such service, as determined under subsection (g).

(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1987, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act to an individual and is attributable to interim covered service shall be determined by—

(1) computing the amount of such benefits including credit for such service;

(2) computing the amount of such benefits, if any, without including credit for such service; and

(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

[Sec. 207. Repealed.[1]]

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[1] P.L. 99-335, §309; 100 Stat. 607.

ELECTIONS BY CERTAIN COVERED EMPLOYEES

SEC. 208. [5 U.S.C. 8331 note] (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act beginning on or before December 31, 1983, may—

(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

(A) to terminate participation in such system, effective after December 31, 1983; or

(B) to remain under such system, as if the preceding sections of this Act and the amendments made by this Act had not been enacted; or

(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act and the amendments made by this Act; or

(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act and the amendments made by this Act.

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[*Internal References.*—S.S. Act §201 catchline has a footnote referring to P.L. 98-168.]

P.L. 98-181, Approved November 30, 1983 (97 Stat. 1153)

Supplemental Appropriations Act, 1984

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CONSIDERATION OF UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

SEC. 221. [42 U.S.C. 602 note] Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part A of title IV of the Social Security Act, any utility payment made in lieu of any rental payment by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937[1] or section 236 of the National Housing Act[2] shall be considered to be a shelter payment.

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[*Internal Reference.*—S.S. Act §402(a)(7) has a footnote referring to P.L. 98-181.]

P.L. 98-369, Approved July 18, 1984 (98 Stat. 494)

Deficit Reduction Act of 1984

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SEC. 2303. * * *

(h) [42 U.S.C. 1395u note] The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.

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[1] P.L. 75-412.

[2] P.L. 73-479.

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PACEMAKER REIMBURSEMENT REVIEW AND REFORM

SEC. 2304. [42 U.S.C. 1395l note] (a)(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

(i) weekly during the first month after implantation,

(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

(iii) monthly thereafter.

(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.

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LESSER OF COST OR CHARGES

SEC. 2308. * * *

(b) [42 U.S.C. 1395f note] (1) For purposes of applying the nominality test under sections 1814(b)(2) and 1833(a)(2)(B)(ii) of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.

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STUDY OF MEDICARE PART B PAYMENTS

SEC. 2309. [42 U.S.C. 1395l note] (a)(1) The Director of the Office of Technology Assessment shall conduct a study of physician reimbursement under the medicare program and report to Congress on such study not later than December 31, 1985. The report shall include specific findings and recommendations on methods by which payment amounts and other program policies under part B of title XVIII of the Social Security Act may be modified—

(A) to eliminate inequities in the relative amounts paid to physicians by type of service, locality, and specialty, with particular attention to any inequities between cognitive services and medical procedures; and

(B) to increase incentives for physicians and other suppliers under such part to accept assignment for services covered under title XVIII of the Social Security Act.

The study shall also examine the influence of payment methodology and payment levels on the utilization of services.

(2) In carrying out the study under paragraph (1)(A), the Director shall take into account the relative time, complexity, investment in professional training, and overhead expenses necessary to the provision of various medical services and procedures, as well as the influence of the changes in technology

(3) The report under paragraph (1)(A) shall include information on methodologies which could be applied in the development of fee schedules on a national or regional basis for payments under part B of title XVIII of the Social Security Act in a manner consistent with the findings of the study under this subsection.

(4) In preparing the report and recommendations, the Director shall consult with the Secretary of Health and Human Services and, as appropriate, with national organizations of physicians and other interested associations and individuals.

(b) In order to assist the Director in completing the study and to facilitate Congressional review, the Secretary of Health and Human Services shall compile a centralized medicare part B charge data base, utilizing information gathered by the medicare carriers for charges in 1983. Such data shall include information, by procedure, on—

(1) utilization,
(2) assignment rates of physicians and suppliers,
(3) actual, customary, and prevailing charges, and
(4) the differences in charges by physician specialty and locality.

Such information shall be provided to the Director of the Office of Technology Assessment.

(c) The Secretary shall review the report submitted under subsection (a)(1) and shall report to the Congress his comments on the report and recommendations for legislative amendments.

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SEC. 2312. * * *

(d) [None assigned.] The Secretary of Health and Human Services shall conduct a study of possible methods of reimbursement under title XVIII of the Social Security Act which would not discourage the use of certified registered nurse anesthetists by hospitals. The Secretary shall report the results of such study to the Congress as soon as is practicable.

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PROSPECTIVE PAYMENT WAGE INDEX

SEC. 2316. [42 U.S.C. 1395ww note] * * *

(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.

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PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

SEC. 2320. [42 U.S.C. 1395b-1 note] (a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section, that the State does not want paragraph (1) to apply to that project.

(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide[1] waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act are published.

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[1] As in original. Capitalization questionable.

(b) The project referred to in subsection (a) is the statewide[2] demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92-603), which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act.

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SEC. 2323. * * *

(e) [42 U.S.C. 1395l note] The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act, and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.

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PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

SEC. 2325. [42 U.S.C. 1395y note] The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act, that payment will not be made under part B of title XVIII of such Act for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.

CONTRACTS FOR MEDICARE CLAIMS PROCESSING

SEC. 2326. (a) [42 U.S.C. 1395h note] During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993[3]), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act, and not more than two contracts under section 1842 of such Act, on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year[4] period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. In addition, during such period the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract.[5] Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).

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SEC. 2343. * * *

(d) [42 U.S.C. 1395x note] The Secretary of Health and Human Services shall conduct a study of the necessity and appropriateness of the requirements that certain "core" services be furnished directly by a hospice, as required under section 1861(dd)(2)(A)(ii)(I) of the Social Security Act. The Secretary shall report the results of such study to the Congress with the report required under section 122(i)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

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SEC. 2350. (a) * * *

(2) [42 U.S.C. 1395mm note] The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the

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[2] As in original. Capitalization questionable.
[3] P.L. 101-239, §6215(a)(1), struck out "1989" and substituted "1993".
[4] P.L. 101-239, §6215(a)(2), inserted "2-year".
[5] P.L. 101-239, §6215(a)(3), added this sentence.

amendments made by paragraph (1) to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.

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WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS

SEC. 2355. [None assigned.] (a) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall approve, with appropriate terms and conditions as defined by the Secretary, applications or protocols submitted for waivers described in subsection (c), and the evaluation of such protocols, in order to carry out such project. Such approval shall be effected not later than 30 days after the date on which the application or protocol for a waiver is submitted or not later than 30 days after the date of the enactment of this Act in the case of an application or protocol submitted before the date of the enactment of this Act.

(b) A project referred to in subsection (a) is a project—

(1) to demonstrate the concept of a social health maintenance organization with the organizations as described in Project No. 18-P-9 7604/1—04 of the University Health Policy Consortium of Brandeis University;

(2) which provides for the integration of health and social services under the direct financial management of a provider of services;

(3) under which all medicare services will be provided by or under arrangements made by the organization at a fixed annual prepaid capitation rate for medicare of 100 percent of the adjusted average per capita cost;

(4) under which medicaid services will be provided at a rate approved by the Secretary;

(5) under which all payors will share risk for no more than two years, with the organization being at full risk in the third year and in succeeding years;

(6) which is being provided funds under a grant provided by the Secretary of Health and Human Services; and

(7) with respect to which substantial private funds are being provided other than under the grant referred to in paragraph (5).

(c) The waivers referred to in subsection (a) are appropriate waivers of—

(1) certain requirements of title XVIII of the Social Security Act, pursuant to section 402(a) of the Social Security Amendments of 1967 (as amended by section 222 of the Social Security Amendments of 1972); and

(2) certain requirements of title XIX of the Social Security Act, pursuant to section 1115 of such Act.

(d)(1) The Secretary of Health and Human Services shall submit a preliminary report to the Congress on the status of the projects and waivers referred to in subsection (a) 45 days after the date of the enactment of this Act.

(2) The Secretary shall submit a[*] interim report to the Congress on the projects referred to in subsection (a) not later than 42 months after the date of the enactment of this Act.

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SEC. 2373. * * *

(c)[42 U.S.C. 1396a note](1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act (including any part of the plan operating pursuant to section 1902(f) of such Act), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

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[*] As in original. Should be "an".

(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

(5) In this subsection, a State plan is considered to include—

(A) any amendment or other change in the plan which is submitted by a State, or

(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).

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SEC. 2601. * * *

(c) [42 U.S.C. 410 note] For purposes of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1954, an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

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(e) [42 U.S.C. 410 note] (1) For purposes of section 210(a)(5) of the Social Security Act (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1954 (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1954 by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

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[*Internal References.*—S.S. Act §209(e) cites the Tax Reform Act of 1984 and §1845(b) and (e) cites the Deficit Reduction Act of 1984 and S.S. Act titles XVIII, title XVIII, parts A and B and XIX and §§1842, 1862, and 1871 catchlines and §§210(a), 1814(b), 1833(a), 1861(dd), 1876(c) and 1886(a) and (d) have footnotes referring to P.L. 98-369.]

P.L. 98-378, Approved August 16, 1984 (98 Stat. 1305)

Child Support Enforcement Amendments of 1984

* * * * * * *

WISCONSIN CHILD SUPPORT INITIATIVE

SEC. 22. [42 U.S.C. 602 note] (a)(1) If the State of Wisconsin requests the Secretary of Health and Human Services to waive the requirements of parts A and D of title IV of the Social Security Act, or to waive the requirements of part D and only those requirements of part A of such Act as relate to the provision of aid to dependent children as defined (without regard to section 407) in section 406(a) of the Social Security Act (hereafter referred to in this section as "dependent children in single-parent families"), in order to permit the State to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, the Secretary shall waive such requirements if—

(A) the State provides a complete description, in accordance with paragraph (2), of the program, known as the Initiative, which it will operate in place of the programs under such parts A and D, and makes the description readily available to the public throughout the State;

(B) the Governor provides assurances that, under the Initiative, assistance will be provided to all children in need of financial support, and the State will continue to operate an effective child support enforcement program;

(C) the State agrees that, during the conduct of such test, it will continue to determine eligibility for medical assistance under the State plan approved under title XIX of the Social Security Act, applying the criteria (insofar as may be applicable to members of families with dependent children affected by the Initiative) in effect under its State plan approved under part A of title IV for the month preceding the month in which the Initiative (approved under this section) becomes effective, except that such criteria shall be deemed to have been changed to the extent necessary to comply with generally applicable changes in Federal law or regulations occurring after the date of the enactment of this Act;

(D) the State specifies measurable performance objectives, submits an evaluation plan (including criteria for evaluating the Initiative), and agrees to submit interim and final evaluations and reports, at such time or times and containing such information, as the Secretary may require; and

(E) the State agrees to obtain, at least once every two years, a financial and compliance audit of the funds received under this section and to obtain, after the close of the operation of the Initiative under this section, such an audit and make it public within the State on a timely basis and provide a copy to the Secretary within 30 days after its completion.

(2) The program description provided under paragraph (1)(A) shall describe in detail how the proposed Initiative will affect children and families, with specific reference to the principles for calculating benefits and establishing and enforcing child support obligations. The description shall also include estimates of cost and program effects and provide other relevant information necessary for the Secretary to determine whether the financial well-being of children and their families will be adversely affected by the operation of the Initiative.

(b) The Child Support Initiative proposed by the State of Wisconsin as detailed in the program description submitted to the Secretary, and the related requested waivers, shall become effective within 120 days after its submission unless the Secretary determines that the financial well-being of children in the State will be adversely affected by the Initiative. The Secretary shall notify the State in writing that, effective with the beginning of the following quarter (or of such later quarter as the State may select), the State may operate its Child Support Initiative instead of its programs of aid to families with dependent children (or, if the State had so requested, instead of its program of aid to dependent children in single-parent families) and child support enforcement in such county or counties, or on a statewide basis, as the State has indicated in its request. Except as specifically provided in subsection (c), no amount will be payable for any quarter under section 403(a) (or under section 403(a) with respect to single-parent families, if the State had so requested), 455(a), or 458 of the Social Security Act with respect to such county or counties in which the Initiative is in effect.

(c)(1) For each quarter during which such program is in effect throughout the State, the Secretary will pay to the State the sum of its proportionate share (as defined in paragraph (4)(A)) of each of the following:

(A) the amount advanced by the Secretary to all the other States (as defined in section 1101(a) of the Social Security Act) for such quarter with respect to section 403(a)(1) and (2) of such Act;

(B) the amount so advanced by the Secretary with respect to section 403(a)(3) of such Act;

(C) the amount so advanced by the Secretary with respect to section 455(a) of such Act; and

(D) the amount so advanced by the Secretary with respect to section 458(a) of such Act,

reduced by so much of its proportionate share of support collections on behalf of individuals receiving aid to families with dependent children (as defined in paragraph (4)(B)) as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(2) If in any quarter the Initiative approved under this section is in operation in fewer than all the counties in the State, the amount paid to the State with respect to the counties to which the waiver under subsection (a) applies shall equal (in lieu of the amount specified in paragraph (1)) the proportionate share with respect to the counties in which the Initiative is operated (as defined in paragraph (5)(A)) of the amount

advanced to the State under the four authorities specified in paragraph (1) with respect to all the other counties for such quarter, reduced by so much of the proportionate share of support collections (as defined in paragraph (5)(B)) with respect to the counties in which the Initiative is operated, as would have been credited to the Federal Government under section 457(b) of such Act had such collections been made in the last quarter of fiscal year 1986.

(3) Payment under this subsection shall be estimated by the Secretary before the beginning of each quarter during which the Initiative is in effect on the basis of the advances made under parts A and D of title IV of the Social Security Act for such quarter, and the Secretary shall make payments for such quarter on a monthly basis (with each payment made no later than the beginning of the month involved), in the amounts so estimated, and adjusted as necessary to reflect the amount of any previously made overpayment or underpayment under this section. Payment of any amount determined with respect to paragraphs (1)(A) and (1)(B) shall be made from amounts appropriated to carry out part A of title IV of the Social Security Act for the appropriate fiscal year; payment of any amount determined with respect to paragraphs (1)(C) and (1)(D) shall be made from amounts appropriated to carry out part D of title IV of the Social Security Act.

(4)(A) The State's proportionate share of each amount enumerated in paragraph (1) shall be the portion of such amount that bears the same ratio to such amount as the corresponding portion advanced to the State for quarters in fiscal years 1984 through 1986 bears to the total corresponding amount advanced to all the other States for such quarters.

(B) The State's proportionate share of support collections means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children by all the other States for the quarter involved as such collections by the State for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other States for such quarters.

(5)(A) The proportionate share with respect to the counties in which the Initiative is operated, in the case of—

(i) the amount advanced to the State with respect to all other counties under section 403(a)(1) of the Social Security Act;

(ii) the amount so advanced under section 403(a)(3) of such Act;

(iii) the amount so advanced under section 455(a) of such Act; and

(iv) the amount so advanced with respect to section 458(a) of such Act,

is the sum of such amounts, each having been multiplied by the ratio of (I) the corresponding amount advanced with respect to such counties for all quarters in fiscal years 1984 through 1986 to (II) the corresponding amount advanced with respect to all the other counties in the State for all such quarters.

(B) The proportionate share of support collections for any quarter, with respect to the counties in which the Initiative is operated, means the amount that bears the same ratio to such collections on behalf of individuals receiving aid to families with dependent children with respect to all the other counties in the State for such quarter as such collections by such counties for quarters in fiscal years 1984 through 1986 bear to the total of such collections by all the other counties in the State for such quarters.

(6) If the State requests, under subsection (a), waiver of only those requirements under part A of title IV of the Social Security Act as relate to the provision of aid to dependent children in single-parent families, and continues to operate its program of aid to families with dependent children deprived by reason of the unemployment of a parent—

(A) the State's proportionate share of the amount specified in paragraph (1)(A) (and only that amount) shall be computed under paragraph (4) by application of the ratio of (i) the amount advanced to the State, under section 403(a)(1) of the Social Security Act for quarters in fiscal years 1984 through 1986 with respect to expenditures in the form of aid to dependent children in single-parent families, to (ii) the amount advanced to all the other States, under section 403(a)(1) and (2) of such Act with respect to such expenditures, rather than by application of the ratio specified in paragraph (4); and

(B) part A of title IV of such Act shall continue to apply to the State's program of aid to families with dependent children deprived by reason of the unemployment of a parent; except that section 403(a)(3) shall not apply during the period that, or in the part or parts of the State where, the Initiative is in effect.

(d)(1) The State may cease to conduct the Initiative under this section and (if it so chooses) return to the administration of its plans approved under part A and part D of title IV of the Social Security Act upon the provision to the Secretary of at least 3 months advance notice (or such greater advance notice as may be necessary so that administration of such plans will resume at the beginning of a quarter in the fiscal year).

(2) The Secretary may terminate approval of the Initiative upon the giving of at least 3 months advance notice (or such greater advance notice as may be necessary as specified in paragraph (1)) to the State if it is determined that the financial well-being of children in the State (or county or counties involved) would be better achieved by the operation of programs under part A and part D of title IV of the Social Security Act.

(e) This section shall be in effect for quarters beginning after September 30, 1986, and ending before October 1, 1994.

SENSE OF THE CONGRESS THAT STATE AND LOCAL GOVERNMENTS SHOULD FOCUS ON THE PROBLEMS OF CHILD CUSTODY, CHILD SUPPORT, AND RELATED DOMESTIC ISSUES

SEC. 23. [None assigned.] (a) The Congress finds that—

(1) the divorce rate in the United States has reached alarming proportions and the number of children being raised in single parent families has grown accordingly;

(2) there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program;

(3) Congress is strengthening that program to recognize the needs of all children;

(4) related domestic issues, such as visitation rights and child custody, are often intricately intertwined with the child support problem and have received inadequate consideration; and

(5) these related issues remain within the jurisdiction of State and local governments, but have a critical impact on the health and welfare of the children of the Nation.

(b) It is the sense of Congress that—

(1) State and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdictions of such governments;

(2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and

(3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.

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[*Internal References.*—S.S. Act §455(e) and §458(b) cite the Child Support Enforcement Amendments of 1984 and S.S. Act title IV, and IV, parts A and D have footnotes referring to P.L. 98-378.]

P.L. 98-432, Approved September 28, 1984 (98 Stat. 1671)

Shoalwater Bay Indian Tribe—Dexter-by-the-Sea Claim Settlement Act

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SEC. 5. [None assigned.]

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(e) None of the funds or income therefrom distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 98-432.]

P.L. 98-473, Approved October 12, 1984 (98 Stat. 1837)

[Continuing Appropriations for Fiscal Year 1985]

* * * * * * *

PART J—NOTICE ON SOCIAL SECURITY CHECKS

SEC. 1212. [42 U.S.C. 1302 note] (a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act, and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act.

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[*Internal Reference.*—S.S. Act §205(i) has a footnote referring to P.L. 98-473.]

P.L. 98-500, Approved October 19, 1984 (98 Stat. 2317)
Old Age Assistance Claims Settlement Act

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TREATMENT OF FUNDS

SEC. 8. [25 U.S.C. 2307] Funds distributed under the provisions of this Act shall not be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 98-500.]

P.L. 98-602, Approved October 30, 1984 (98 Stat. 3149)
[Wyandotte Tribe of Oklahoma]

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MANNER OF PER CAPITA DISTRIBUTION; TREATMENT OF AMOUNTS PAID OR DISTRIBUTED

SEC. 106. [None assigned.]

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(d) None of the funds distributed per capita under this title or made available under this title for any tribal program shall be—

(1) subject to Federal, State, or local income taxes, or

(2) considered as income or resources in determining either eligibility for, or the amount of assistance under—

(A) the Social Security Act, or

(B) in the case of any per capita share of $2,000 or less, any other Federal, State, or local programs.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 98-602.]

P.L. 99-130, Approved October 28, 1985 (99 Stat. 549)
[Mdewakanton and Wahpekute Eastern or Mississippi Sioux]

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Sec. 8. [None assigned.] Per capita and dividend payment distributions made pursuant to this Act shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended (96 Stat. 2515; 25 U.S.C. 1407).

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 99-130.]

P.L. 99-146, Approved November 11, 1985 (99 Stat. 780)
[Chippewas of Lake Superior]

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Sec. 6. [None assigned.]

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(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

* * * * * * *

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 99-146.]

P.L. 99-177, Approved December 12, 1985 (99 Stat. 1037)
[Public Debt Limit Increase]

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Title II—Balanced Budget and Emergency Deficit Control Act of 1985

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Sec. 252. [2 U.S.C. 902] ENFORCING PAY-AS-YOU-GO.

(a) Fiscal Years 1992-1995 Enforcement.—The purpose of this section is to assure that any legislation (enacted after the date of enactment of this section) affecting direct spending or receipts that increases the deficit in any fiscal year covered by this Act will trigger an offsetting sequestration.

(b) Sequestration; Look-Back.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 253, there shall be a sequestration to offset the amount of any net deficit increase in that fiscal year and the prior fiscal year caused by all direct spending and receipts legislation enacted after the date of enactment of this section (after adjusting for any prior sequestration as provided by paragraph (2)). OMB shall calculate the amount of deficit increase, if any, in those fiscal years by adding—

(1) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) applicable to those fiscal years, other than any amounts included in such estimates resulting from—

(A) full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of enactment of this section, and

(B) emergency provisions as designated under subsection (e); and

(2) the estimated amount of savings in direct spending programs applicable to those fiscal years resulting from the prior year's sequestration under this section or section 253, if any (except for any amounts sequestered as a result of a net deficit increase in the fiscal year immediately preceding the prior fiscal year), as published in OMB's end-of-session sequestration report for that prior year.

(c) Eliminating a Deficit Increase.—(1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:

(A) First.—All reductions in automatic spending increases specified in section 256(a) shall be made.

(B) SECOND.—If additional reductions in direct spending accounts are required to be made, the maximum reductions permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

(C) THIRD.—(i) If additional reductions in direct spending accounts are required to be made, each remaining non-exempt direct spending account shall be reduced by the uniform percentage necessary to make the reductions in direct spending required by paragraph (1); except that the medicare programs specified in section 256(d) shall not be reduced by more than 4 percent and the uniform percentage applicable to all other direct spending programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the required reduction in direct spending.

(ii) For purposes of determining reductions under clause (i), outlay reductions (as a result of sequestration of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

(2) For purposes of this subsection, accounts shall be assumed to be at the level in the baseline.[1]

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SEC. 253. [2 U.S.C. 903] ENFORCING DEFICIT TARGETS.

(a) SEQUESTRATION.—Within 15 calendar days after Congress adjourns to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits) or section 252 (enforcing pay-as-you-go) there shall be a sequestration to eliminate the excess deficit (if any remains) if it exceeds the margin.

(b) EXCESS DEFICIT; MARGIN.—The excess deficit is, if greater than zero, the estimated deficit for the budget year, minus—

(1) the maximum deficit amount for that year;

(2) the amounts for that year designated as emergency direct spending or receipts legislation under section 252(e); and

(3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the deposit insurance reestimate for that year, if any, calculated under subsection (h).

The "margin" for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is $15,000,000,000.

(c) DIVIDING THE SEQUESTRATION.—To eliminate the excess deficit in a budget year, half of the required outlay reductions shall be obtained from non-exempt defense accounts (accounts designated as function 050 in the President's fiscal year 1991 budget submission) and half from non-exempt, non-defense accounts (all other non-exempt accounts).

(d) DEFENSE.—Each non-exempt defense account shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources in that account at that time by the uniform percentage necessary to carry out subsection (c), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

(e) NON-DEFENSE.—Actions to reduce non-defense accounts shall be taken in the following order:

(1) FIRST.—All reductions in automatic spending increases under section 256(a) shall be made.

(2) SECOND.—If additional reductions in non-defense accounts are required to be made, the maximum reduction permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

(3) THIRD.—(A) If additional reductions in non-defense accounts are required to be made, each remaining non-exempt, non-defense account shall be reduced by the uniform percentage necessary to make the reductions in non-defense outlays required by subsection (c), except that—

(i) the medicare program specified in section 256(d) shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under section 252 or, if it has been reduced by 2 percent or more under section 252, it may not be further reduced under this section; and

(ii) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent in total (including any reduction made under section

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[1] P.L. 101-508, §13101(a), amended section 252 in its entirety.

251),

and the uniform percent applicable to all other programs under this subsection shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense outlays.[2]

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SEC. 255. [2 U.S.C. 905] EXEMPT PROGRAMS AND ACTIVITIES.

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.—Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.[3]

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(h) LOW-INCOME PROGRAMS.—The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children * * *;
Child nutrition * * *;
Commodity supplemental food program * * *;
Food stamp programs * * *;
Grants to States for Medicaid * * *;
Supplemental Security Income Program * * *; and
Women, infants, and children program * * *.

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SEC. 256. [2 U.S.C. 906] EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.

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(c)[4] TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any order issued by the President under section 254[5] shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage.[6] No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(d) SPECIAL RULES FOR MEDICARE PROGRAM.—

(1) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.[7]

(2) TIMING OF APPLICATION OF REDUCTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

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[2] P.L. 101-508, §13101(a), amended section 253 in its entirety.
[3] P.L. 101-508, §13101(c)(1), amended subsection (a) in its entirety.
[4] P.L. 101-508, §13101(d)(2), redesignated subsection (f) as subsection (c).
[5] P.L. 101-508, §13101(d)(3), struck out "section 252" and substituted "section 254".
[6] P.L. 101-508, §13101(d)(4), added this sentence.
[7] P.L. 101-508, §13101(d)(5), amended paragraph (1) in its entirety.

(B) Payment on the basis of cost reporting periods.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.

⟦(C) Repealed.[8]⟧

(3) No increase in beneficiary charges in assignment-related cases.—If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(4) No effect on computation of AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

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(f)[9] Treatment of child support enforcement program.—Notwithstanding any change in the display of budget accounts, any order issued by the President under section 254[10] shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

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(i)[11] Treatment of payments and advances made with respect to unemployment compensation programs.—(1) For purposes of section 254[12]—

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254[13] by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

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(k) Special Rules for the JOBS Portion of AFDC.—

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[8] P.L. 101-508, §13101(d)(6); 104 Stat. 1388-591.

[9] P.L. 101-508, §13101(d)(2), redesignated subsection (e) as subsection (f).

[10] P.L. 101-508, §13101(d)(3), struck out "section 252" and substituted "section 254".

[11] P.L. 101-508, §13101(d)(2), redesignated subsection (h) as subsection (i).

[12] P.L. 101-508, §13101(d)(3), struck out "section 252" and substituted "section 254".

[13] P.L. 101-508, §13101(d)(3), struck out "section 252" and substituted "section 254".

(1) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any order issued by the President under section 254 shall accomplish the full amount of any required sequestration of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

(2) NEW ALLOTMENT FORMULA.—

(A) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act for the fiscal year to which the sequestration applies shall be equal to—

(i) the lesser of—

(I) that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year; or

(II) the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(B) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act for the fiscal year to which the sequestration applies that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.[14]

(l) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

(1) Budgetary resources sequestered from any account other than a trust or special fund account shall be permanently cancelled.

(2) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(3) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

(4) Except as otherwise provided, obligations in sequestered accounts shall be reduced only in the fiscal year in which a sequester occurs.

(5) If an automatic spending increase is sequestered, the increase (in the applicable index) that was disregarded as a result of that sequestration shall not be taken into account in any subsequent fiscal year.

(6) Except as otherwise provided, sequestration in trust and special fund accounts for which obligations are indefinite shall be taken in a manner to ensure that obligations in the fiscal year of a sequestration are reduced, from the level that would actually have occurred, by the applicable sequestration percentage.[15]

SEC. 257. [2 U.S.C. 907] THE BASELINE.

(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and

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[14] P.L. 101-508, §13101(d)(2), added subsection (k).
[15] P.L. 101-508, §13101(d)(2), added subsection (l).

funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

(2) Exceptions.—(A) No program with estimated current-year outlays greater than $50 million shall be assumed to expire in the budget year or outyears.

(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

(3) Hospital insurance trust fund.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

(c) Discretionary Appropriations.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

(1) Inflation of current-year appropriations.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

(2) Expiring housing contracts.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

(3) Social insurance administrative expenses.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

(4) Pay annualization; offset to pay absorption.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

(5) Inflators.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross national product fixed-weight price index for that fiscal year differs from the average of such estimated index for the current year.

(6) Current-year appropriations.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.

(d) Up-to-Date Concepts.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.[16]

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[*Internal References.*—S.S. Act §710(a) and (c) cites the Balanced Budget and Emergency Deficit Control Act of 1985 and S.S. Act titles IV, parts D and E and XVIII and §§202(w), 215(i), 455, 458, and 474 catchlines and §§1842(a), 1870(f), and 1876(a) have footnotes referring to P.L. 99-177.]

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[16] P.L. 101-508, §13101(e)(1), amended section 257 in its entirety.

P.L. 99-190, Approved December 19, 1985 (99 Stat. 1185)
[Continuing Appropriations for Fiscal Year 1986]

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SEC. 126. [None assigned.] Notwithstanding any other provision of this joint resolution, the Secretary of Health and Human Services shall extend, for one additional year, approval to the municipal health services demonstration projects located in Baltimore, Cincinnati, Milwaukee, and San Jose authorized under section 402(a) of the Social Security Amendments of 1967.

SEC. 127. [None assigned.] From the amounts awarded to a State from its allotment under section 2003 of the Social Security Act for fiscal year 1986, the State shall use to maintain and improve the availability and quality of training provided under section 401(b)(1), 98 Stat. 2196, such sums as the State may determine to be required.

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SEC. 130. [None assigned.] (a) In the administration of subchapter III of chapter 83 of title 5, United States Code, title II of the Social Security Act, chapter 21 of the Internal Revenue Code of 1954, and title II of Public Law 98-168, the individual holding the position of Chief of the United States Capitol Police on January 1, 1985—

(1) shall be held and considered to have been appointed to that position before January 1, 1984,

(2) during the 60-day period following the date of the enactment into law of this section, shall be eligible to elect coverage under the provisions of such subchapter III, and

(3) upon such election, shall not be covered by section 210(a)(5)(G) of the Social Security Act, and section 3121(b)(5)(G) of the Internal Revenue Code of 1954, with respect to periods of service performed by such individual in such position after the election.

(b) Any period of service performed by such individual as Chief of the United States Capitol Police prior to making any such election shall, after such election and payment by or on behalf of such individual of appropriate contributions and interest covering such period of service, be considered as creditable service for purposes of such subchapter III and shall not be considered as covered service for purposes of title II of Public Law 98-168.

(c) Service performed by such individual as Chief of the United States Capitol Police after December 31, 1983, and prior to the election referred to in subsection (a), shall also be considered "employment" for purposes of the provisions of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, if such service would have been "employment" under such provisions but for this section.

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[*Internal References.*—S.S. Act title II and §§1110 and 2003 catchlines and §210(a) have footnotes referring to P.L. 99-190.]

P.L. 99-264, Approved March 24, 1986 (100 Stat. 61)
White Earth Reservation Land Settlement Act of 1985

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SEC. 16. [25 U.S.C. 331 note] None of the moneys which are distributed under this Act shall be subject to Federal or State income taxes or be considered as income or resources in determining eligibility for or the amount of assistance under the Social Security Act or any other federally assisted program.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 99-264.]

P.L. 99-272, Approved April 7, 1986 (100 Stat. 82)
Consolidated Omnibus Budget Reconciliation Act of 1985

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SEC. 9108. CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS.

(a) [42 U.S.C. 1395ww note] CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972, or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972), shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Security Act if such system applies—

(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

(2) to the review of at least 75 percent of—

(A) all revenues or expenses in such geographic area for inpatient hospital services, and

(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX.

(b) [42 U.S.C. 1395ww note] APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

(c) [42 U.S.C. 1395ww note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

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SEC. 9114. INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS.

(a) [42 U.S.C. 1395ww note] DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

(b) [42 U.S.C. 1395ww note] CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.

SEC. 9115. SPECIAL RULES FOR IMPLEMENTATION OF SUBPART.

(a) [42 U.S.C. 1395ww note] WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart.

(b) [42 U.S.C. 1395ww note] USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.

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SEC. 9122. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN CHAMPUS AND CHAMPVA PROGRAMS.

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(c) [None assigned.] REFERENCE TO STUDY REQUIRED.—For a study of the use by CHAMPUS of the medicare prospective payment system, see section 634 of the Department of Defense Authorization Act, 1985 (Public Law 98-525), the deadline for which is extended under section 2002 of this Act.

(d) [42 U.S.C. 1395cc note] REPORT.—The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

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Sec. 9126.

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(c) [42 U.S.C. 1395y note] Reinstatement of Waiver of Liability Presumption.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the period beginning with the first month beginning after the date of the enactment of this Act and ending on December 31, 1995[1].

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Sec. 9128. SENSE OF THE SENATE WITH RESPECT TO INPATIENT HOSPITAL DEDUCTIBLE.

[None assigned.] In view of the $92 Medicare hospital deductible increase that went into effect January 1, 1986, it is the sense of the Senate that the Committee on Finance should report legislation which will reform calculation of the annual increase in such deductible so that it is more consistent with annual increases in Medicare payments to hospitals.

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Sec. 9202. PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF MEDICAL EDUCATION.

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(c) [42 U.S.C. 1395ww note] * * *

(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

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(g) [Stricken.[2]]

(h) [42 U.S.C. 1395ww note] PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section.

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(j) [42 U.S.C. 1395ww note] SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER.—In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act or section 402 of the Social Security Amendments of 1967, for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.

Sec. 9204. MORATORIUM ON LABORATORY PAYMENT DEMONSTRATION.

(a) [42 U.S.C. 1395ww note] MORATORIUM.—Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act. The Secretary may contract for the design of, and site selection for, such demonstration projects.

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[1] P.L. 101-508, §4008(a)(1), struck out "October 31, 1990" and substituted "December 31, 1995".

[2] P.L. 101-508, §4118(i)(2), struck out subsection (g).

(b) [42 U.S.C. 1395ww note] COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.

Sec. 9205. HOME HEALTH WAIVER OF LIABILITY.

[42 U.S.C. 1395y note] The Secretary of Health and Human Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act, apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until November 1, 1990.

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Sec. 9215. EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS.

[42 U.S.C. 1395b-1 note] The Secretary of Health and Human Services shall extend through December 31, 1993[3], approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967. The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, and such other factors as may be appropriate.[4]

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Sec. 9217. LIVER TRANSPLANTS.

(a) [None assigned.] The Senate finds that:

(1) There have been more than 600 liver transplants since 1963 and the one year survival rate at qualified institutions is now greater than 70 percent.

(2) There are 4,000 to 4,700 potential candidates in the United States each year who require a liver transplant, but only a small percentage would be eligible for Medicare coverage.

(3) There are currently individuals on waiting lists for liver transplants who will die without Medicare coverage.

(4) After extensive review and consideration of all the available data, an National Institutes of Health expert panel concluded liver transplantation is "a therapeutic modality for end-stage liver disease that deserves broader application" in a limited number of centers where they can be carried out under optimal conditions.

(5) National Institutes of Health further recommended that liver transplants be done in individuals under 18 years of age.

(6) The CHAMPUS program, after considering all relevant data, determined that there was no scientific basis for limiting liver transplants to children under 18 years of age.

(7) The Department of Health and Human Services has determined that liver transplantation is no longer an experimental procedure only for children under 18.

(b) [None assigned.] Based upon the above findings, it is the sense of the Senate that:

(1) For the purposes of title XVIII of the Social Security Act, the Secretary immediately reconsider the Medicare liver transplant coverage decision and implement a policy under which a liver transplant shall not be considered to be an experimental procedure for Medicare beneficiaries solely because an individual is over 18 years of age.

(2) A liver transplant shall be covered under such title when reasonable and medically necessary.

(3) The Secretary shall place appropriate limiting criteria on coverage, including those relating to the patient's condition, the disease state, and the institution providing the care, so as to ensure the highest quality of medical care demonstrated to be consistent with successful outcomes.

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Sec. 9220. EXTENSION OF ON LOK WAIVER.

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[3] P.L. 101-239, §6135(1), struck out ", for a period of three additional years" and substituted "through December 31, 1993".

[4] P.L. 101-239, §6135(2), added this sentence.

(a) [None assigned.] CONTINUED APPROVAL.—

(1) MEDICARE WAIVERS.—Notwithstanding any limitations contained in section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967, the Secretary of Health and Human Services shall continue approval of the risk-sharing application (described in section 603(c)(1) of Public Law 98-21) for waivers of certain requirements of title XVIII of the Social Security Act after the end of the period described in that section.

(2) MEDICAID WAIVERS.—Notwithstanding any limitations contained in section 1115 of the Social Security Act, the Secretary shall approve any application of the Department of Health Services, State of California, for a waiver of requirements of title XIX of such Act in order to continue carrying out the demonstration project referred to in section 603(c)(2) of Public Law 98-21 after the end of the period described in that section.

(b) [None assigned.] TERMS, CONDITIONS, AND PERIOD OF APPROVAL.—The Secretary's approval of an application (or renewal of an application) under this section—

(1) shall be on the same terms and conditions as applied with respect to the corresponding application under section 603(c) of Public Law 98-21 as of July 1, 1985, except that requirements relating to collection and evaluation of information for demonstration purposes (and not for operational purposes) shall not apply; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with the terms and conditions described in paragraph (1).

SEC. 9221. CONTINUATION OF "ACCESS: MEDICARE" DEMONSTRATION PROJECT.

(a) [None assigned.] APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of titles XVIII and XIX of the Social Security Act necessary to provide for the continuation, through July 31, 1987, of the "Access: Medicare" demonstration project carried out pursuant to section 222 of the Social Security Amendments of 1972 and section 402(a) of the Social Security Amendments of 1967 by Monroe County Long Term Care Program, Inc.

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project as in effect on August 31, 1985.

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SEC. 9301. MEDICARE PHYSICIAN PAYMENT PROVISIONS.

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(b) * * *

(3) [42 U.S.C. 1395u note] PERIOD FOR ENTERING PARTICIPATION AGREEMENTS.—The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act, as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.

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SEC. 9304. DETERMINATIONS OF INHERENT REASONABLENESS OF CHARGES AND CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.

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(b) [42 U.S.C. 1395u note] COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS.—(1) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for nonparticipating physicians' services) by multiplying the physician's customary charges by .85.

(2) In applying section 1842(b) of the Social Security Act to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

(3) In this subsection, the term "hospital-compensated physician" means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.

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Sec. 9314. DEMONSTRATION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE.

(a) [42 U.S.C. 1395b-1 note] DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish a 5-year[5] demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act (hereinafter in this section referred to as "medicare beneficiaries").

(b) [42 U.S.C. 1395b-1 note] PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

(1) health screenings,
(2) health risk appraisals,
(3) immunizations, and
(4) counseling on and instruction in—
  (A) diet and nutrition,
  (B) reduction of stress,
  (C) exercise and exercise programs,
  (D) sleep regulation,
  (E) injury prevention,
  (F) prevention of alcohol and drug abuse,
  (G) prevention of mental health disorders,
  (H) self-care, including use of medication, and
  (I) reduction or cessation of smoking.

(c) [42 U.S.C. 1395b-1 note] CONDUCT OF PROGRAM.—The demonstration program shall—

(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

(2) be conducted in no fewer than five sites (at least one of which shall serve a rural area), which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

(4) be designed—

(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

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[5] P.L. 101-508, §4164(a)(1)(A), struck out "4-year" and substituted "5-year".

(C) to facilitate evaluation under subsection (d).

(d) [42 U.S.C. 1395b-1 note] EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act.

(e) [42 U.S.C. 1395b-1 note] REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

(2) Not later than April 1, 1993, the Secretary shall submit an interim report[6] to those Committees on the demonstration program and shall include in the report—

(A) the evaluation described in subsection (d), and

(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.[7]

(f) [42 U.S.C. 1395b-1 note] FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the administrative costs of the demonstration program shall not exceed $7,5000,000[8] over the duration of the program and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)[9].

(g) [42 U.S.C. 1395b-1 note] WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

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SEC. 9401. 100 PERCENT PEER REVIEW OF CERTAIN SURGICAL PROCEDURES.

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(e) [42 U.S.C. 1320c-13 note] STUDY.—The Secretary of Health and Human Services shall conduct a study of the results of the amendments made by this section, and shall report the results of the study to the Congress within 36 months after the date of the enactment of this Act.

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SEC. 9502. MODIFICATIONS OF WAIVER PROVISIONS FOR HOME AND COMMUNITY-BASED SERVICES.

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(f) [42 U.S.C. 1396n note] WAIVER EXTENSIONS.—The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.

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SEC. 9516. CORRECTION AND REDUCTION PLANS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

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[6] P.L. 101-508, §4146(a)(1)(B), struck out "Not later than five years after the date of the enactment of this Act, the Secretary shall submit a final report" and substituted "Not later than April 1, 1993, the Secretary shall submit an interim report".

[7] P.L. 101-508, §4164(a)(1)(C), added paragraph (3).

[8] P.L. 101-508, §4164(a)(1)(D), struck out "$5,900,000 " and substituted "$7,5000,000".

[9] P.L. 101-508, §4164(a)(1)(E), inserted "and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3)".

(c) [42 U.S.C. 1396r note] REPORT.—The Secretary of Health and Human Services shall submit a report to the Congress on the implementation and results of section 1922 of the Social Security Act. Such report shall be submitted not later than 30 months after the effective date of final regulations promulgated to implement such section.

SEC. 9517. MODIFYING APPLICATION OF MEDICAID HMO PROVISIONS FOR CERTAIN HEALTH CENTERS.

* * * * * * *

(c) * * *

(2) [42 U.S.C. 1396b note] (A) Except as provided in subparagraph (B) and in paragraph (3)[10], the amendments made by paragraph (1) shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

(B) In the case of a health insuring organization—

(i) which first becomes operational on or after January 1, 1986, but

(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act and before such date, certain requirements of section 1902 of such Act,

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act shall not apply during the period for which such waiver is effective.

(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.

(3)(A) [42 U.S.C. 1396b note] Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

(B) A health insuring organization described in this subparagraph is one that—

(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act) in a manner consistent with the requirements of such section; and

(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act, and who are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

(D) In this paragraph, the term "medicaid beneficiary" means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act, other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title.[11]

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SEC. 9522. EXPANSION OF SERVICES UNDER DEMONSTRATION WAIVERS.

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[10] P.L. 101-508, §4734(1), inserted "and in paragraph (3)".

[11] P.L. 101-508, §4734(2), added paragraph (3).

[None assigned.] In the case of waivers granted to (or submitted during 1986 by) the State of Oregon under section 1915(b) of the Social Security Act, the Secretary of Health and Human Services may waive the requirements of section 1903(m)(2)(A) of such Act with respect to any entity providing services under any such waiver if such entity does not provide more than 5 of the services listed in section 1903(m)(2)(A) of such Act, and does not provide inpatient hospital services.

Sec. 9523. EXTENSION OF TEXAS WAIVER PROJECT.

(a) [None assigned.] RENEWED APPROVAL.—Notwithstanding any limitations contained in section 1115 of the Social Security Act but subject to subsection (b) of this section, the Secretary of Health and Human Services, upon application, shall renew approval of demonstration project number 11-P-97473/6-06 ("Modifications under the Texas System of Care for the Elderly: Alternatives to the Institutionalized Aged"), previously approved under that section, until July[12] 1, 1990.

(b) [None assigned.] TERMS AND CONDITIONS.—The Secretary's renewed approval of the project under subsection (a)—

(1) shall be on the same terms and conditions as applied to the project as of December 31, 1985; and

(2) shall remain in effect until such time as the Secretary finds that the applicant no longer complies with such terms and conditions.

Sec. 9524. WISCONSIN HEALTH MAINTENANCE ORGANIZATION WAIVER.

[None assigned.] The waiver granted to the State of Wisconsin pursuant to section 1915(b) of the Social Security Act relating to the requirements of section 1903(m) of such Act in conjunction with a waiver of the requirements of section 1902(a)(23) of such Act shall, upon request by the State, be reinstated, and shall be renewable for terms of 2 years, subject to the showings required generally under section 1915(b) of such Act.

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Sec. 9529. MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AND FOSTER CARE.

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(b) * * *

(2) [42 U.S.C. 1396a note] In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act) entered into before the date of the enactment of this Act—

(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.

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Sec. 12114. COVERAGE OF CONNECTICUT STATE POLICE.

[42 U.S.C. 418 note] Notwithstanding any provision of section 218 of the Social Security Act, the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.

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Sec. 12202. PRESERVATION OF BENEFIT STATUS FOR DISABLED WIDOWS AND WIDOWERS WHO LOST SSI BENEFITS BECAUSE OF 1983 CHANGES IN ACTUARIAL REDUCTION FORMULA.

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(b) [42 U.S.C. 1383c note] IDENTIFICATION OF BENEFICIARIES.—(1) As soon as possible after the date of the enactment of this Act, the Secretary of Health and

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[12] P.L. 101-239, §6408(b), struck out "January" and substituted "July".

Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act by reason of the application of section 1634(b) of the Social Security Act.

(2) Each State shall—

(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

(B) solicit their applications for such assistance, and

(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.

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SEC. 12301. AFDC QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

(a) [42 U.S.C. 603 note] STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the "Secretary") shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV-A of the Social Security Act and for the Medicaid Program under title XIX of such Act. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

(b) [42 U.S.C. 603 note] MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act (hereafter in this section referred to as the "moratorium period"), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV-A of such Act in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV-A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

(c) [42 U.S.C. 603 note] RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

(A) restructure the quality control systems under title XIX of the Social Security Act to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX, and shall reduce payments to States—

(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

(d) [42 U.S.C. 603 note] EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act.

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[*Internal References*.—S.S. Act §1886(d) cites the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and S.S. Act titles IV, part A, XVIII and XIX and §§218, 1110, 1115, 1164, 1813, 1833, 1881, 1886, and 1922 catchlines and §§1634(b), 1842(b) and (i), 1861(v), 1862(a), 1866(a), 1886(c), 1902(a), 1903(m), and 1915(b) and (c) have footnotes referring to P.L. 99-272.]

P.L. 99-319, Approved May 23, 1986 (100 Stat. 478)
Protection and Advocacy for Mentally Ill Individuals Act of 1986

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SYSTEMS REQUIREMENTS

SEC. 105. [42 U.S.C. 10805] (a) A system established in a State under section 103 to protect and advocate the rights of mentally ill individuals shall—

(1) have the authority to—

(A) investigate incidents of abuse and neglect of mentally ill individuals if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred;

(B) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are receiving care or treatment in the State; and

(C) pursue administrative, legal, and other remedies on behalf of an individual who—

(i) was a mentally ill individual; and

(ii) is a resident of the State,

but only with respect to matters which occur within 90 days after the date of the discharge of such individual from a facility providing care or treatment;

(2) be independent of any agency in the State which provides treatment or services (other than advocacy services) to mentally ill individuals;

(3) have access to facilities in the State providing care or treatment;

(4) in accordance with section 106, have access to all records of—

(A) any individual who is a client of the system if such individual, or the legal guardian, conservator, or other legal representative of such individual, has authorized the system to have such access; and

(B) any individual (including an individual who has died or whose whereabouts are unknown)—

(i) who by reason of the mental or physical condition of such individual is unable to authorize the system to have such access;

(ii) who does not have a legal guardian, conservator, or other legal representative, or for whom the legal guardian is the State; and

(iii) with respect to whom a complaint has been received by the system or with respect to whom there is probable cause to believe that such individual has been subject to abuse or neglect;

(5) have an arrangement with the Secretary and the agency of the State which administers the State plan under title XIX of the Social Security Act for the furnishing of the information required by subsection (b);

(6) establish an advisory council—

(A) which will advise the system on policies and priorities to be carried out in protecting and advocating the rights of mentally ill individuals; and

(B) which shall include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness, a provider of mental health services, individuals who have received or are receiving mental health services, and family members of such individuals, and at least one-half the membership of which shall be comprised of individuals who have received or are receiving mental health services or who are family members of such individuals; and

(7) on January 1, 1987, and January 1 of each succeeding year, prepare and transmit to the Secretary and the head of the State mental health agency of the State in which the system is located a report describing the activities, accomplishments, and expenditures of the system during the most recently completed fiscal year, including a section prepared by the advisory council that describes the activities of the council and its assessment of the operations of the system;

(8) on an annual basis, provide the public with an opportunity to comment on the priorities established by, and the activities of, the system; and

(9) establish a grievance procedure for clients or prospective clients of the system to assure that mentally ill individuals have full access to the services of the system.

(b) The Secretary and the agency of a State which administers its State plan under title XIX of the Social Security Act shall provide the eligible system of the State with a copy of each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to mentally ill individuals in the State in which such system is located. A report or plan shall be made available within 30 days after the completion of the report or plan.

(c)(1)(A) Each system established in a State, through allotments received under section 103, to protect and advocate the rights of mentally ill individuals shall have a governing authority.

(B) In States in which the governing authority is organized as a private non-profit entity with a multi-member governing board, or a public system with a multi-member governing board, such governing board shall be selected according to the policies and procedures of the system. The governing board shall be composed of—

(i) members (to be selected no later than October 1, 1990) who broadly represent or are knowledgeable about the needs of the clients served by the system; and

(ii) in the case of a governing authority organized as a private non-profit entity, members who broadly represent or are knowledgeable about the needs of the clients served by the system including the chairperson of the advisory council of such system.

(2) The governing authority established under paragraph (1) shall—

(A) be responsible for the planning, design, implementation, and functioning of the system; and

(B) consistent with subparagraph (A), jointly develop the annual priorities of the system with the advisory council.

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[*Internal References.*—S.S. Act §1919(c) cites the Protection and Advocacy for Mentally Ill Individuals Act of 1986 and S.S. Act titles XVIII and XIX catchlines have footnotes referring to P.L. 99-319.]

P.L. 99-335, Approved June 6, 1986 (100 Stat. 514)
Federal Employees' Retirement System Act of 1986

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SEC. 301. [5 U.S.C. 8331 note] ELECTIONS.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

(3)(A) Except as provided in subparagraph (B), any individual—

(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and

(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title,

shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this subsection.

(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

(B) to become subject to chapter 84 of such title.

An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the individual—

(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

(i) elect to become subject to chapter 84 of such title; or

(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

(i) during the period after December 31, 1986, and before July 1, 1987; or

(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

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[*Internal References.*—S.S. Act §210(a) cites the Federal Employees' Retirement System Act of 1986.]

P.L. 99-346, Approved June 30, 1986 (100 Stat. 674)

Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act

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TREATMENT OF AMOUNTS PAID OR DISTRIBUTED FROM THE INVESTMENT FUND

SEC. 6. [None assigned.]

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(b) Any payments or distributions described in subsection (a), and the availability of any amount for such payments or distributions, shall not be considered as income or resources or otherwise used as the basis for denying or reducing—

(1) any financial assistance or other benefit under the Social Security Act—

(A) to which any enrolled member of the tribe, or the household of any such member, is otherwise entitled, or

(B) for which such member or household is otherwise eligible, or

(2) any other—

(A) Federal financial assistance,

(B) Federal benefit, or

(C) benefit under any program funded in whole or in part by the Federal Government,

to which such member or household is otherwise entitled or for which such member or household is otherwise eligible.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 99-346.]

P.L. 99-377, Approved August 8, 1986 (100 Stat. 805)

[Chippewas of the Mississippi]

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SEC. 4. [None assigned.]

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(b) None of the funds distributed per capita or held in trust shall be subject to Federal or State income taxes or be considered as income or resources in determining the extent of eligibility for assistance under the Social Security Act or other Federal assistance programs.

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[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 99-377.]

P.L. 99-401, Approved August 27, 1986 (100 Stat. 903)

CHILDREN'S JUSTICE AND ASSISTANCE ACT OF 1986

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TITLE II—TEMPORARY CHILD CARE FOR HANDICAPPED CHILDREN AND CRISIS NURSERIES

SEC. 201. [42 U.S.C. 5117 note] **SHORT TITLE.**

This title may be cited as the "Temporary Child Care for Children With Disabilities[1] and Crisis Nurseries Act of 1986".

SEC. 202. [42 U.S.C. 5117] **FINDINGS.**

The Congress finds that it is necessary to establish demonstration programs of grants to the States to assist private and public agencies and organizations to provide: (A) temporary non-medical child care for children with special needs to alleviate social, emotional, and financial stress among children and families of such children, and (B) crisis nurseries for children who are abused and neglected, at risk of abuse or neglect, or who are in families receiving child protective services.

SEC. 203. [42 U.S.C. 5117a] **TEMPORARY CHILD CARE FOR HANDICAPPED AND CHRONICALLY ILL CHILDREN.**

The Secretary of Health and Human Services shall establish a demonstration program of grants to States to assist private and public agencies and organizations to provide in-home or out-of-home temporary non-medical child care for children with disabilities[2], and children with chronic or terminal illnesses. Such care shall be provided on a sliding fee scale with hourly and daily rates.

SEC. 204. [42 U.S.C. 5117b] **CRISIS NURSERIES.**

The Secretary of Health and Human Services shall establish a demonstration program of grants to States to assist private and public agencies and organizations to provide crisis nurseries for children who are abused and neglected, are at high risk of abuse and neglect, or who are in families receiving child protective services. Such service shall be provided without fee for a maximum of 30 days in any year. Crisis nurseries shall also provide referral to support services.

SEC. 205. [42 U.S.C. 5117c] **ADMINISTRATIVE PROVISIONS.**

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[1] P.L. 101-127, §6, struck out "Handicapped Children" and substituted "Children With Disabilities".

[2] P.L. 101-127, §2(1), struck out "handicapped children" and substituted "children with disabilities".

(a) Applications.—

(1)(A)[3] Any State which desires to receive a grant under section 203 or 204 shall submit an application to the Secretary in such form and at such times as the Secretary may require. Such application shall—

(i)[4] describe the proposed State program, including the services to be provided, the agencies and organizations that will provide the services, and the criteria for selection of children and families for participation in projects under the program;

(ii)[5] contain an estimate of the cost of developing, implementing, and evaluating the State program;

(iii)[6] set forth the plan for dissemination of the results of the projects;[7]

(iv)[8] specify the State agency designated to administer programs and activities assisted under this title and the plans for coordinating interagency support of the program; and[9]

(v) with respect to State agencies described in subparagraph (B), provide documentation of a commitment by all such agencies to develop a State plan for coordination among the agencies in carrying out programs and activities provided by the State pursuant to a grant under section 203.[10]

(B) State agencies referred to in subparagraph (A)(v) are State agencies responsible for providing services to children with disabilities or with chronic or terminal illnesses, or responsible for financing services for such children, or both, including State agencies responsible for carrying out State programs that—

(i) receive Federal financial assistance; and

(ii) relate to social services, maternal and child health, comprehensive health and mental health, medical assistance and infants, or toddlers and families.[11]

(2) Such application shall contain assurances that—

(A) not more than 5 percent of funds made available under this title will be used for State administrative costs;

(B) projects will be of sufficient size, scope, and quality to achieve the objectives of the program;

(C) in the distribution of funds made available under section 203, a State will give priority consideration to agencies and organizations with experience in working with children with disabilities, with chronically ill children, and with the families of such children,[12] and which serve communities with the greatest need for such services;

(D) in the distribution of funds made available under section 204, the State will give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families, and with children at high risk of abuse and neglect and their families, and which serve communities which demonstrate the greatest need for such services; and

(E) Federal funds made available under this title will be so used as to supplement and, to the extent practicable, increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in this title, and in no case supplant such State or local funds.

(b) Award of Grants.—

(1) In reviewing applications for grants under this title, the Secretary shall consider, among other factors, the equitable geographical distribution of grants.

(2) In the award of temporary non-medical child care demonstration grants under section 203, the Secretary shall give a preference to States in which such care is unavailable.

(3) Of the funds appropriated under section 206, one-half shall be available for grants under section 203 and one-half shall be available for grants under section 204.

(c) Evaluations.—States receiving grants under this title, shall annually submit a report to the Secretary evaluating funded programs. Such report shall include—

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[3] P.L. 101-127, §3(a)(2)(A), inserted "(A)".

[4] P.L. 101-127, §3(a)(1)(A), redesignated subparagraph (A) as clause (i).

[5] P.L. 101-127, §3(a)(1)(A), redesignated subparagraph (B) as clause (ii).

[6] P.L. 101-127, §3(a)(1)(A), redesignated subparagraph (C) as clause (iii).

[7] P.L. 101-127, §3(a)(1)(B), struck out "and".

[8] P.L. 101-127, §3(a)(1)(A), redesignated subparagraph (D) as clause (iv).

[9] P.L. 101-127, §3(a)(1)(C), struck out the period and substituted "; and".

[10] P.L. 101-127, §3(a)(1)(D), added clause (v).

[11] P.L. 101-127, §3(a)(2)(B), added subparagraph (B).

[12] P.L. 101-127, §2(2)(A), struck out "handicapped and chronically ill children and their families" and substituted "children with disabilities, with chronically ill children, and with the families of such children,".

(1)(A) information concerning costs, the number of participants, impact on family stability, the incidence of abuse and neglect, the types, amounts, and costs of various services provided, demographic data on recipients of services, and such other information as the Secretary may require; and

(B) with respect to services provided by the States pursuant to section 203, information concerning the number of families receiving services and documentation of parental satisfaction with the services provided;

(2) a specification of the amount and source of public funds, and of private funds, expended in the State for temporary child care for children with disabilities or with chronic or terminal illnesses; and

(3) a State strategy for expanding the availability in the State of temporary child care, and other family support, for families of children with disabilities or with chronic or terminal illnesses, which strategy specifies the manner in which the State intends to expend any Federal financial assistance available to the State for such purpose, including any such assistance provided to the State for programs described in section 205(a)(1)(B).[13]

(d) DEFINITIONS.—For the purposes of this title—

(1) the term "Secretary" means the Secretary of Health and Human Services;

(2) the term "children with disabilities" has the meaning given the term "children with disabilities[14]"[15] in section 602(a)(1) of the Education of the Handicapped Act[16];

(3) the term "crisis nursery" means a center providing temporary emergency services and care for children;[17]

(4) the term "non-medical child care" means the provision of care to provide temporary relief for the primary caregiver; and[18]

(5) the term "State" means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, or Palau.[19]

SEC. 206. [42 U.S.C. 5117d] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for the purposes of this title such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989, and $20,000,000 for each of the fiscal years 1990 and 1991[20]. Amounts appropriated under the preceding sentence[21] shall remain available until expended.

SEC. 207. [42 U.S.C. 5117a note] EFFECTIVE DATE.

This title shall take effect October 1, 1986.

[*Internal Reference.*—S.S. Act title IV catchline has a footnote referring to P.L. 99-401.]

P.L. 99-425, Approved September 30, 1986 (100 Stat. 966)
Human Services Reauthorization Act of 1986

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TITLE VI—CHILD DEVELOPMENT ASSOCIATE SCHOLARSHIP ASSISTANCE PROGRAM

SEC. 601. [42 U.S.C. 10901 note] SHORT TITLE.

This title may be cited as the "Child Development Associate Scholarship Assistance Act of 1985".

SEC. 602. [42 U.S.C. 10901] GRANTS AUTHORIZED.

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[13] P.L. 101-127, §4, struck out "information concerning costs, the number of participants, impact on family stability, the incidence of abuse and neglect, and such other information as the Secretary may require." and substituted a dash and paragraphs (1)-(3).

[14] P.L. 101-476, §901(g), struck out "handicapped children" and substituted "children with disabilities".

[15] P.L. 101-127, §2(2)(B), struck out "'handicapped children' has the meaning given such term" and substituted "'children with disabilites' has the meaning given the term 'handicapped children'".

[16] P.L. 101-476, §901(a)(3), provided that any reference to the "Education of the Handicapped Act" shall be deemed a reference to the "Individuals with Disabilities Education Act".

See P.L. 91-230, §602(a)(1) (this volume).

[17] P.L. 101-127, §3(b)(1), struck out "and".

[18] P.L. 101-127, §3(b)(2), struck out the period and substituted "; and".

[19] P.L. 101-127, §3(b)(3), added paragraph (5).

[20] P.L. 101-127, §5(1), inserted ", and $20,000,000 for each of the fiscal years 1990 and 1991".

[21] P.L. 101-127, §5(2), struck out "Such sums" and substituted "Amounts appropriated under the preceding sentence".

The Secretary is authorized to make a grant for any fiscal year to any State receiving a grant under title XX of the Social Security Act for such fiscal year to enable such State to award scholarships to eligible individuals within the State who are candidates for the Child Development Associate credential.

SEC. 603. [42 U.S.C. 10902] APPLICATIONS.

(a) Application Required.—A State desiring to participate in the grant program established by this title shall submit an application to the Secretary in such form as the Secretary may require.

(b) Contents of Applications.—A State's application shall contain appropriate assurances that—

(1) scholarship assistance made available with funds provided under this title will be awarded—

(A) only to eligible individuals;

(B) on the basis of the financial need of such individuals; and

(C) in amounts sufficient to cover the cost of application, assessment, and credentialing (including, at the option of the State, any training necessary for credentialing)[1] for the Child Development Associate credential for such individuals;[2]

(2) not more than 35 percent of the funds received under this title by a State may be used to provide scholarship assistance under paragraph (1) to cover the cost of training described in paragraph (1)(C); and[3]

(3)[4] not more than 10 percent of the funds received by the State under this title will be used for the costs of administering the program established in such State to award such assistance.

(c) Equitable Distribution.—In making grants under this title, the Secretary shall—

(1) distribute such grants equitably among States; and

(2) ensure that the needs of rural and urban areas are appropriately addressed.

SEC. 604. [42 U.S.C. 10903] DEFINITIONS.

For purposes of this title—

(1) the term "eligible individual" means a candidate for the Child Development Associate credential whose income does not exceed the 130 percent of the lower living standard income level[5], by more than 50 percent;

(2) the term "lower living standard income level" means that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary of Labor and based on the most recent lower living family budget issued by the Secretary of Labor;[6]

(3)[7] the term "Secretary" means the Secretary of Health and Human Services; and

(4)[8] the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, and Palau.

SEC. 605. [42 U.S.C. 10904] ADMINISTRATIVE PROVISIONS.

(a) Reporting.—Each State receiving grants under this title shall annually submit to the Secretary information on the number of eligible individuals assisted under the grant program, and their positions and salaries before and after receiving the Child Development Associate credential.

(b) Payments.—Payments pursuant to grants made under this title may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

SEC. 606. [42 U.S.C. 10905] AUTHORIZATION OF APPROPRIATIONS.

There are[9] authorized to be appropriated $1,500,000 for fiscal year[10] 1990, $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994[11] for carrying out this title.

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[1] P.L. 101-501, §501(a), inserted "(including, at the option of the State, any training necessary for credentialing)".

[2] P.L. 101-501, §501(b)(1), struck out "and".

[3] P.L. 101-501, §501(b)(3), added this paragraph (2).

[4] P.L. 101-501, §501(b)(2), redesignated the former paragraph (2) as paragraph (3).

[5] P.L. 101-501, §502(1), struck out "poverty line, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))" and substituted "130 percent of the lower living standard income level".

[6] P.L. 101-501, §502(3), added this paragraph (2).

[7] P.L. 101-501, §502(2), redesignated the former paragraph (2) as paragraph (3).

[8] P.L. 101-501, §502(2), redesignated the former paragraph (3) as paragraph (4).

[9] P.L. 101-501, §503(1), struck out "is" and substituted "are".

[10] P.L. 101-501, §503(2), struck out "each of the fiscal years 1987, 1988, and 1989, and" and substituted "fiscal year".

[11] P.L. 101-501, §503(3), inserted ", $3,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992, 1993, and 1994".

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[*Internal Reference.*—S.S. Act title XX catchline has a footnote referring to P.L. 99-425.]

P.L. 99-509, Approved October 21, 1986 (100 Stat. 1874)
Omnibus Budget Reconciliation Act of 1986

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SEC. 9302. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

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(d) * * *

(2) [42 U.S.C. 1395ww note] EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act on the date of the enactment of this Act shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.

(3) [42 U.S.C. 1395ww note] BUDGET-NEUTRAL IMPLEMENTATION.—Paragraph (2) and the amendment made by paragraph (1)(A) shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act are not increased or decreased by reason of the classifications required by such paragraph or amendment.

(4) [None assigned.] RURAL SECONDARY SPECIALTY DEMONSTRATION PROJECT.—

(A) ESTABLISHMENT.—The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary") shall enter into an agreement with Lake Region Hospital and Nursing Home at Fergus Falls, Minnesota, for the purpose of conducting a rural secondary specialty center demonstration project (in this paragraph referred to as the "project") under title XVIII of the Social Security Act.

(B) PURPOSE.—The purpose of this project shall be to determine the effect that a modified system of making payments under part A of such title to rural secondary specialty centers would have on—

(i) total expenditures under such part, and

(ii) the access of medicare beneficiaries located in rural areas to quality health care.

(C) PAYMENTS.—During the period of the demonstration project, payments under part A of such title shall be made under the project on the basis of average standardized amounts computed for urban areas in the region in which the project is conducted, as adjusted by a rural wage index.

(D) DURATION.—The project shall be of a maximum duration of three years.

(E) REPORTS.—The Secretary shall submit a final report to the Congress on the project not later than six months after the completion of the project.

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SEC. 9305. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

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(d) [None assigned.] REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than January 1, 1990.

(e) [None assigned.] STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) Administratively necessary days defined.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) Considerations in conducting study.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) Report on study.—The Secretary shall report to Congress on the results of the study not later than January 1, 1989.

(f) [42 U.S.C. 1395y note] Extending waiver of liability provisions to hospice programs.—

(1) In general.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act, apply (under section 1879(a) of such Act) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

(2) Effective date.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and before December 31, 1995[1].

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(h) [42 U.S.C. 1395x note] Development of uniform needs assessment instrument.—

(1) Development.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) Advisory panel.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) Report on instrument.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall[2] recommendations for the appropriate use of such instrument or instruments.

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(k) [42 U.S.C. 1395x note] Prior and concurrent authorization demonstration project.—

(1) In general.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior and concurrent authorization for post-

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[1] P.L. 101-508, §4008(a)(2), struck out "November 1, 1990" and substituted "December 31, 1995".
[2] As in original.

hospital extended care services and home health services furnished under part A or part B of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be initiated by not later than January 1, 1987.

(3) CONSULTATION AND MONITORING.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries. The Secretary shall monitor the acceptance of individuals entitled to benefits under title XVIII of the Social Security Act by providers to ensure that the placement of such individuals is not delayed until the results of prior and concurrent review are known.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than February 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior and concurrent authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior or concurrent authorization;

(B) impact of prior or concurrent authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior or concurrent authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

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SEC. 9311. PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

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(d) [42 U.S.C. 1395h note] * * *

(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

SEC. 9312. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

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(c) [42 U.S.C. 1395mm note] * * *

(3) * * *

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act (as amended by this section) effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act—

(i) before January 1, 1994[3], section 1876(f) of the Social Security Act shall not apply to the organization;

(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall conduct an annual review of the organization to determine the organization's compliance with the quality assurance requirements of section 1876(c)(6) of such Act; and[4]

(iii) after January 1, 1990, if the organization receives an unfavorable review under clause (ii), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act.[5]

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(h) [42 U.S.C. 1395mm note] ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

(i) [42 U.S.C. 1395mm note] USE OF RESERVE FUNDS.—Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99-177 during fiscal year 1986.

SEC. 9313. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

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(d) [42 U.S.C. 1395ll note] STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) develop prototype criteria and standards for defining and measuring quality of care;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for promoting, coordinating, and supervising at the national level quality review and assurance activities; and

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[3] P.L. 101-239, §6212(a)(1), struck out "1990" and substituted "1994".
[4] P.L. 101-239, §6212(a)(2), amended clause (ii) in its entirety.
[5] P.L. 101-239, §6212(a)(2), amended clause (iii) in its entirety.

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) Report.—The Secretary shall submit to Congress, not later than January 1, 1990, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) Arrangements for study.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

(5) Coordination.—The Secretary shall designate an office with responsibilities for coordinating studies, under this subsection and other authority, relating to the quality of services furnished to medicare and medicaid beneficiaries, in particular studies relating to the evaluation of the prospective payment system on the quality of health care provided to medicare beneficiaries. These responsibilities shall include assessing the feasibility and costs of alternative studies in relation to their importance, overseeing and coordinating access to needed data, and maintaining a clearinghouse for both public and private sector studies.

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SEC. 9315. PAYMENTS FOR HOME HEALTH SERVICES.

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(b) [42 U.S.C. 1395x note] Considerations in establishing limits.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.

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SEC. 9320. PAYMENT FOR SERVICES OF CERTIFIED REGISTERED NURSE ANESTHETISTS.

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(i) [42 U.S.C. 1395k note] Except as provided in subsection (k), the amendments made by this section (other than subsection (a)) shall apply to services furnished on or after January 1, 1989.

(j) [42 U.S.C. 1395k note] Construction.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

(k) [42 U.S.C. 1395k note] Authorization of Continuation of Pass-Through.—

(1) Subject to paragraph (2), the amendments made by this section shall not apply during a year (beginning with 1989)[6] to a hospital located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act) if the hospital establishes, at any time before the year[7] to the satisfaction of the Secretary of

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[6] P.L. 101-239, §6132(a)(2)(A), struck out "1989, 1990, and 1991" and substituted "a year (beginning with 1989)".

[7] P.L. 101-239, §6132(a)(2)(B), struck out "before April 1, 1989," and substituted "at any time before the year".

Health and Human Services that—

(A) as of January 1, 1988, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist),

(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 500[8] (or such higher number as the Secretary determines to be appropriate), and

(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act for professional services furnished by the anesthetist at the hospital.

(2) Paragraph (1) shall not apply in in[9] a year (after 1989)[10] to a hospital unless the hospital establishes, before the beginning of the[11] year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 500[12] (or such higher number as the Secretary determines to be appropriate).

[(3) Stricken.[13]]

SEC. 9321. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

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(c) [42 U.S.C. 1395ww note] TREATMENT OF CAPITAL-RELATED REGULATIONS.—

(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence is void and of no effect.

(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act and section 1886(g)(3)(A) and (B) of the Social Security Act (as amended by section 9303(a) of this Act).

(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from the term "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

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SEC. 9331. PAYMENT FOR PHYSICIANS' SERVICES.

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(c) [42 U.S.C. 1395u note] MEDICARE ECONOMIC INDEX.—

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(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

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[8] P.L. 101-239, §6132(a)(1), struck out "250" and substituted "500".

[9] As in original; one "in" should be stricken.

[10] P.L. 101-239, §6132(a)(3)(A), struck out "1990 or 1991" and substituted "in a year (after 1989)".

[11] P.L. 101-239, §6132(a)(3)(B), struck out "each respective" and substituted "the".

[12] P.L. 101-239, §6132(a)(1), struck out "250" and substituted "500".

[13] P.L. 101-239, §6132(a)(4), struck out paragraph (3).

(6) MEI DEFINED.—In this subsection, the term "MEI" means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act.

(d) [42 U.S.C. 1395u note] DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM.—

(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), after public notice and opportunity for public comment and after consulation[14] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act shall make payments under part B of title XVIII of such Act based on the grouping of procedure codes effected under paragraph (1).

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SEC. 9332. INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) * * *

(4) [42 U.S.C. 1395u note] EFFECTIVE DATES.—

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(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act not later than September 30, 1988, to reflect performance of carriers during the enrollment period before April 1, 1988.

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SEC. 9334. PAYMENT FOR CATARACT SURGICAL PROCEDURES.

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(b) [42 U.S.C. 1395u note] RATIFICATION OF REGULATIONS.—

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(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(j)(1)(D) of the Social Security Act (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.

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SEC. 9335. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) [42 U.S.C. 1395rr note] COMPOSITE RATES FOR DIALYSIS SERVICES.—

(1) IN GENERAL.—Effective with respect to dialysis services provided on or after October 1, 1986, and before December 31, 1990[15], [16] the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00. With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989), increased by $1.00.[17] No change may be made in the base rate in effect as of September 30,

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[14] As in original.

[15] P.L. 101-239, §6203(a)(1)(A), struck out "October 1, 1988" and substituted "October 1, 1990".

[16] P.L. 101-508, §4201(a)(1), struck out "October 1, 1990," and substituted "December 31, 1990,".

[17] P.L. 101-508, §4201(a)(2), added this sentence.

1990, unless the Secretary makes such change in accordance with notice and comment requirements set forth in section 1871(b)(1) of such Act.[18]

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(d) * * *

(2) [42 U.S.C. 1395rr note] Deadline for establishing new areas.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than May 1, 1987. The Secretary shall designate network administrative organizations for such areas by not later than July 1, 1987.

(3) [42 U.S.C. 1395rr note] Transition.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

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(k) * * *

(2) [42 U.S.C. 1395rr note] Deadline.—The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than October 1, 1987 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines).

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SEC. 9338. SERVICES OF A PHYSICIAN ASSISTANT.

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(d) [Stricken.[19]]

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SEC. 9339. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

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(d) [42 U.S.C. 1395l note] State standards for directors of clinical laboratories.—

(1) In general.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

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SEC. 9342. [42 U.S.C. 1395b-1 note] ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) Demonstration projects.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) Services under demonstration projects.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,
(2) home and community-based services,
(3) mental health services,
(4) outpatient drug therapy,
(5) respite care and other supportive services and counseling for family,
(6) adult day care services, and
(7) other in-home services.

(c) Conduct of projects.—The demonstration projects shall—

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[18] P.L. 101-239, §6203(a)(1)(B), added this sentence.

[19] P.L. 101-508, §4002(f)(2), struck out subsection (d).

(1) each be conducted over a period of 4 years[20];

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge;

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the fourth[21] year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

(f)[22] FUNDING.—Expenditures (not to exceed $55,000,000[23] for the projects and $3,000,000[24] for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

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SEC. 9344. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) * * *

(2) [42 U.S.C. 1395w-1 note] APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

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SEC. 9353. PRO REVIEW OF QUALITY OF CARE.

(a) * * *

(4) [42 U.S.C. 1320c-3 note] SMALL-AREA ANALYSIS.—The Secretary of Health and Human Services shall provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act, data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act.

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SEC. 9412. [None assigned.] WAIVER AUTHORITY FOR CHRONICALLY MENTALLY ILL AND FRAIL ELDERLY.

(a) CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.—

(1) The Secretary of Health and Human Services may, in accordance with this subsection, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

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[20] P.L. 101-508, §4164(a)(2)(A), struck out "3 years" and substituted "4 years".

[21] P.L. 101-508, §4164(a)(2)(B), struck out "third year" and substituted "fourth year".

[22] As in original. No subsection (e).

[23] P.L. 101-508, §4164(a)(2)(C)(i), struck out "$40,000,000" and substituted "$55,000,000".

[24] P.L. 101-508, §4164(a)(2)(C)(ii), struck out "$2,000,000" and substituted "$3,000,000".

(2) A waiver shall be granted under this subsection with respect to a demonstration program only if—

(A) the demonstration program has been awarded a grant from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(B) the State provides assurances satisfactory to the Secretary that under such waiver—

(i) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(ii) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(3) The authority under this subsection extends only to the following, as they relate to the provision of mental health services:

(A) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(B) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

(4)(A) A waiver under this subsection shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(B) The authority to approve a waiver under this subsection extends only during the five-year period beginning on October 1, 1986.

(5) Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this subsection in the same manner as they apply to a waiver under that section.

(6) The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this subsection.

(b) **Frail elderly demonstration project waivers.**—

(1) The Secretary of Health and Human Services shall grant waivers of certain requirements of titles XVIII and XIX of the Social Security Act to not more than 15[35] public or nonprofit private community-based organizations to enable such organizations to provide comprehensive health care services on a capitated basis to frail elderly patients at risk of institutionalization.

(2)(A) Except as provided in subparagraph (B), the terms and conditions of a waiver granted pursuant to this subsection shall be substantially the same as the terms and conditions of the On Lok waiver (referred to in section 603(c) of the Social Security Amendments of 1983 and extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985), including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk.

(B) In order to receive a waiver under this subsection, an organization must participate in an organized initiative to replicate the findings of the On Lok long-term care demonstration project (described in section 603(c)(1) of the Social Security Amendments of 1983).

(C) Subject to subparagraph (B), any waiver granted pursuant to this subsection shall be for an initial period of 3 years. The Secretary may extend such waiver beyond such initial period for so long as the Secretary finds that the organization complies with the terms and conditions described in subparagraphs (A) and (B).

(3) In the case of an organization receiving an initial waiver under this subsection on or after October 1, 1990, the Secretary (at the request of the organization) shall not require the organization to provide services under title

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[35] P.L. 101-508, §4744(a)(1), struck out "10" and substituted "15".

XVIII of the Social Security Act on a capitated or other risk basis during the first 2 years of the waiver.[26]

(4) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.[27]

SEC. 9413. [None assigned.] CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) Approval of application.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) Terms and conditions.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

SEC. 9414. [None assigned.] NEW JERSEY RESPITE CARE PILOT PROJECT.

(a) Establishment.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of New Jersey (in this section referred to as the "State") for the purpose of conducting a pilot project (in this section referred to as the "project") under title XIX of the Social Security Act for providing respite care services for eligible individuals in order to determine the extent to which—

(1) the provision of necessary respite care services to individuals at risk of institutionalization will delay or avert the need for institutional care, and

(2) respite care services enhance and sustain the role of the family in providing long-term care services for eligible individuals at risk of institutionalization.

(b) Conditions.—The agreement with the Secretary under this section shall—

(1) provide that the project shall be administered by a State health services agency designated for such purpose by the Governor (which may be the State agency administering or responsible for the administration of the State plan for medical assistance under title XIX of the Social Security Act),

(2) provide that the State may submit a detailed proposal describing the project (in lieu of a formal request for the waiver of applicable provisions of title XIX of the Social Security Act) and that submission of such a description by the State will be treated as such a request for purposes of subsection (g),

(3) provide that the State shall utilize a post-eligibility cost-sharing formula based on the available income of participants with income in excess of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981),

(4) provide for a system of review to assure that respite care services are provided only to individuals reasonably determined to be in need of such services, and

(5) meet such other requirements as the Secretary may establish for the proper and efficient implementation of the project.

(c) Definitions.—For purposes of this section—

(1) the term "eligible individual" means an individual—

(A) who is elderly or disabled,

(B)(i) whose income (not including the income of the spouse or family of the individual) does not exceed 300 percent of the amount in effect under section 1611(a)(1)(A) of the Social Security Act (as increased pursuant to section 1617 of such Act), or

(ii) in the case of an individual and spouse who are both dependent on a caregiver, whose combined incomes do not exceed such amount,

(C) whose liquid resources (as declared by the individual) do not exceed $40,000,

(D) who is at risk of institutionalization unless the individual's caregiver is provided with respite care, and

(E) who has been determined to meet the requirements of subparagraphs (A) through (D) in accordance with an application process designed by the State; and

(2) the term "respite care services" shall include—

(A) short-term and intermittent—

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[26] P.L. 101-508, §4744(a)(2), added paragraph (3).

[27] P.L. 101-508, §4744(b)(2), added paragraph (4).

(i) companion or sitter services (paid as well as volunteer),

(ii) homemaker and personal care-services,

(iii) adult day care, and

(iv) inpatient care in a hospital, a skilled nursing facility, or an intermediate care facility (not to exceed a total of 14 days for any individual), and

(B) peer support and training for family caregivers (using informal support groups and organized counseling).

(d) PAYMENTS.—The agreement under this section shall be entered into between the Secretary and the State agency designated by the Governor. Under such agreement the Secretary shall pay to the State, as in[28] additional payment under section 1903 of the Social Security Act for each quarter, an amount equal to 50 percent of the reasonable costs incurred by such State during such quarter in providing respite care services under the project for elderly and disabled individuals who are eligible for medical assistance under the State plan approved under title XIX of such Act (or who would be eligible if coverage under such plan was as broad as allowed under Federal law). The Federal payment shall not exceed $1,000,000 for fiscal year 1987, and $2,000,000 for each of the fiscal years 1988, 1989, and 1990. For the period beginning October 1, 1990, and ending September 30, 1992, Federal payments for the project shall not exceed amounts expended under the project in the preceding fiscal year.[29]

(e) DURATION.—The project under this section may continue until September 30, 1992.[30]

(f) REPORTS.—The State shall arrange for an independent evaluation of the project and shall transmit the evaluation to the Secretary not more than six months after the conclusion of project.

(g) PROVISIONS SUBJECT TO WAIVER.—At the request of the State, the Secretary shall waive the following provisions of title XIX of the Social Security Act as they relate to the pilot project: section 1902(a)(1), section 1902(a)(10)(B), section 1902(a)(10)(C)(i)(III), section 1902(a)(13), and section 1902(a)(30). The Secretary may not waive any other provision of such title with respect to the pilot project.

SEC. 9415. [None assigned.] INAPPLICABILITY OF PAPERWORK REDUCTION ACT.

Notwithstanding any other provision of law, chapter 35 of title 44, United States Code, shall not apply to information required to carry out any provision of this part or the amendments made by this part.

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SEC. 9432. [42 U.S.C. 1396a note] STATE UTILIZATION REVIEW SYSTEMS.

(a) IN GENERAL.—(1)[31] The Secretary of Health and Human Services (in this section referred to as the "Secretary") may not[32] publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act to incude a progrm for ambulatory surgery, preadmission testing, or same-day surgrey.[33]

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(c) STUDY.—

(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

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[28] As in original.

[29] P.L. 101-508, §4746(2), stuck out "No payments shall be made pursuant to this section for any fiscal year beginning after September 30, 1990." and added this sentence.

[30] P.L. 101-508, §4746(1), amended subsection (e) in its entirety.

[31] P.L. 101-508, §4755(b)(1)(A), inserted "(1)".

[32] P.L. 101-508, §4755(b)(1)(B), struck out ", during the period beginning with the date of the enactment of this Act and ending with the date that is 180 days after the day on which the report required by subsection (b) is submitted to the Congress,".

[33] P.L. 101-508, §4755(b)(1)(C), added paragraph (2).

(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act, with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.

(d) Report.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.[34]

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SEC. 9436. [None assigned.] PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) In general.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by[35] amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) Effective period.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

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SEC. 9442. [42 U.S.C. 679a] MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

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[34] P.L. 101-508, §4755(b)(3), added subsection (d).

[35] As in original.

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 479 of the Social Security Act, disseminate the data and information made available through that system.

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[*Internal References.*—S.S. Act §§215(i), 1833(l), and 1886(e) cite the Omnibus Budget Reconciliation Act of 1986 and S.S. Act titles XI, part B, XVIII, XVIII, parts A and B and XIX and §§479, 1816, 1817, 1842, 1861(bb), 1876, 1886, and 1924 catchlines and §§1832(a), 1833(a) and (l), 1842(b), (c), and (j); 1845(a); 1861(b), (s), and (v); 1862(a); 1864(a); 1865(a); 1866(a); 1876(f) and (g); 1879(a); 1881(b) and (f); 1886(a), (b), (d), (e), and (g); 1902(a) and 1915(a) have footnotes referring to P.L. 99-509.]

P.L. 99-514, Approved October 22, 1986 (100 Stat. 2085)

Tax Reform Act of 1986

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SEC. 1151. NONDISCRIMINATION RULES FOR COVERAGE AND BENEFITS UNDER CERTAIN STATUTORY EMPLOYEE BENEFIT PLANS.

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(k) [26 U.S.C. 89 note] Effective Dates.—

(1) In general.—The amendments made by this section shall apply to years beginning after the later of—

(A) December 31, 1987, or

(B) the earlier of—

(i) the date which is 3 months after the date on which the Secretary of the Treasury or his delegate issues such regulations as are necessary to carry out the provisions of section 89 of the Internal Revenue Code of 1986 (as added by this section), or

(ii) December 31, 1988.

(2) Special rule for collective bargaining plan.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to employees covered by such an agreement in years beginning before the earlier of—

(A) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(B) January 1, 1991.

A plan shall not be required to take into account employees to which the preceding sentence applies for purposes of applying section 89 of the Internal Revenue Code of 1986 (as added by this section) to employees to which the preceding sentence does not apply for any year preceding the year described in the preceding sentence.

(3) Exception for certain group-term insurance plans.—In the case of a plan described in section 223(d)(2) of the Tax Reform Act of 1984, such plan shall be treated as meeting the requirements of section 89 of the Internal Revenue Code of 1986 (as added by this section) with respect to individuals described in section 223(d)(2) of such Act. An employer may elect to disregard such individuals in applying section 89 of such Code (as so added) to other employees of the employer.

(4) Special rule for church plans.—In the case of a church plan (within the meaning of section 414(e)(3) of the Internal Revenue Code of 1986) maintaining an insured accident and health plan, the amendments made by this section shall apply to years beginning after December 31, 1988.

(5) Cafeteria plans.—The amendments made by subsection (d)(2) shall apply to taxable years beginning after December 31, 1983.

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SEC. 1883. TECHNICAL CORRECTIONS IN OTHER PROVISIONS RELATED TO SOCIAL SECURITY ACT PROGRAMS.

* * * * * * *

(b) * * *

(11) [42 U.S.C. 602 note] (A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Security Act during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act, shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act.

(B) No State shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent with such provisions) in the administration of the plan during the period specified in subparagraph (A).

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SEC. 1895. COBRA TECHNICAL CORRECTIONS RELATING TO SOCIAL SECURITY ACT PROGRAMS.

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(b) * * *

(16) * * *

(C) [42 U.S.C. 1395y note] For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

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[*Internal References.*—S.S. Act §478 catchline and §§402(a), 404(a), and 1862(a) have footnotes referring to P.L. 99-514.]

P.L. 99-570, Approved October 27, 1986 (100 Stat. 3207)
Anti-Drug Abuse Act of 1986

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SEC. 11005. [42 U.S.C. 602 note] TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER SSI AND MEDICAID PROGRAMS.

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(d) AFDC.—No later than six months after the date of enactment of this Act and after consultation with the States administering plans under title IV of the Social Security Act, the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

* * * * * * *

[*Internal Reference.*—S.S. Act title IV catchline has a footnote referring to P.L. 99-570.]

P.L. 99-576, Approved October 28, 1986 (100 Stat. 3248)
Veterans' Benefits Improvement and Health-Care Authorization Act of 1986

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SEC. 233. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM.

* * * * * * *

(c) [42 U.S.C. 1395cc note] REPORT.—(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

* * * * * * *

[*Internal Reference.*—S.S. Act §1866(a) has a footnote referring to P.L. 99-576.]

P.L. 99-643, Approved November 10, 1986 (100 Stat. 3574)
Employment Opportunities for Disabled Americans Act

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SEC. 6. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

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(b) [42 U.S.C. 1383c note] STATE DETERMINATIONS.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

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[*Internal Reference.*—S.S. Act §1634(c) has a footnote referring to P.L. 99-643.]

P.L. 99-660, Approved November 14, 1986 (100 Stat. 3743)
Title IV—Health Care Quality Improvement Act of 1986

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TITLE IV—ENCOURAGING GOOD FAITH PROFESSIONAL REVIEW ACTIVITIES

SEC. 401. [42 U.S.C. 11101 note] SHORT TITLE.

This title may be cited as the "Health Care Quality Improvement Act of 1986".

SEC. 402. [42 U.S.C. 11101] FINDINGS.

The Congress finds the following:

(1) The increasing occurrence of medical malpractice and the need to improve the quality of medical care have become nationwide problems that warrant greater efforts than those that can be undertaken by any individual State.

(2) There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.

(3) This nationwide problem can be remedied through effective professional peer review.

(4) The threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discourages physicians from participating in effective professional peer review.

(5) There is an overriding national need to provide incentive and protection for physicians engaging in effective professional peer review.

PART A—PROMOTION OF PROFESSIONAL REVIEW ACTIVITIES

SEC. 411. [42 U.S.C. 11111] PROFESSIONAL REVIEW.

(a) IN GENERAL.—

(1) LIMITATION ON DAMAGES FOR PROFESSIONAL REVIEW ACTIONS.—If a professional review action (as defined in section 431(9)) of a professional review body meets all the standards specified in section 412(a), except as provided in subsection (b)—

(A) the professional review body,

(B) any person acting as a member or staff to the body,

(C) any person under a contract or other formal agreement with the body, and

(D) any person who participates with or assists the body with respect to the action,

shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. The preceding sentence shall not apply to damages under any law of the United States or any State relating to the civil rights of any person or persons, including the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. and the Civil Rights Acts, 42 U.S.C. 1981, et seq. Nothing in this paragraph shall prevent the United States or any Attorney General of a State from bringing an action, including an action under section 4C of the Clayton Act, 15 U.S.C. 15C[1], where such an action is otherwise authorized.

(2) PROTECTION FOR THOSE PROVIDING INFORMATION TO PROFESSIONAL REVIEW BODIES.—Notwithstanding any other provision of law, no person (whether as a witness or otherwise) providing information to a professional review body regarding the competence or professional conduct of a physician shall be held, by reason of having provided such information, to be liable in damages under any law of the United States or of any State (or political subdivision thereof) unless such information is false and the person providing it knew that such information was false.

(b) EXCEPTION.—If the Secretary has reason to believe that a health care entity has failed to report information in accordance with section 423(a), the Secretary shall conduct an investigation. If, after providing notice of noncompliance, an opportunity to correct the noncompliance, and an opportunity for a hearing, the Secretary determines that a health care entity has failed substantially to report information in accordance with section 423(a), the Secretary shall publish the name of the entity in the Federal Register. The protections of subsection (a)(1) shall not apply to an entity the name of which is published in the Federal Register under the previous sentence with respect to professional review actions of the entity commenced during the 3-year period beginning 30 days after the date of publication of the name.

(c) TREATMENT UNDER STATE LAWS.—

(1) PROFESSIONAL REVIEW ACTIONS TAKEN ON OR AFTER OCTOBER 14, 1989.—Except as provided in paragraph (2), subsection (a) shall apply to State laws in a State only for professional review actions commenced on or after October 14, 1989.

(2) EXCEPTIONS.—

(A) STATE EARLY OPT-IN.—Subsection (a) shall apply to State laws in a State for actions commenced before October 14, 1989, if the State by legislation elects such treatment.

(B)[2] EFFECTIVE DATE OF ELECTION.—An election under State law is not effective, for purposes of [3],[4] for actions commenced before the effective date of the State law, which may not be earlier than the date of the enactment of that law.

SEC. 412. [42 U.S.C. 11112] STANDARDS FOR PROFESSIONAL REVIEW ACTIONS.

(a) IN GENERAL.—For purposes of the protection set forth in section 411(a), a professional review action must be taken—

(1) in the reasonable belief that the action was in the furtherance of quality health care,

(2) after a reasonable effort to obtain the facts of the matter,

(3) after adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) in the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

A professional review action shall be presumed to have met the preceding standards necessary for the protection set out in section 411(a) unless the presumption is rebutted by a preponderance of the evidence.

(b) ADEQUATE NOTICE AND HEARING.—A health care entity is deemed to have met the adequate notice and hearing requirement of subsection (a)(3) with respect to a physician if the following conditions are met (or are waived voluntarily by the physician):

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[1] As in original; should be "15 U.S.C. 15c".

[2] P.L. 100-177, §402(c) [as added by P.L. 101-239, §6103(e)(6)(A)], struck out subparagraph (B) and redesignated subparagraph (C) as subparagraph (B).

[3] P.L. 100-177, §402(c) [as added by P.L. 101-239, §6103(e)(6)(A)], struck out "subparagraphs (A) and (B)".

[4] As in original; possibly sould strike "for purposes of,".

(1) NOTICE OF PROPOSED ACTION.—The physician has been given notice stating—

(A)(i) that a professional review action has been proposed to be taken against the physician,

(ii) reasons for the proposed action,

(B)(i) that the physician has the right to request a hearing on the proposed action,

(ii) any time limit (of not less than 30 days) within which to request such a hearing, and

(C) a summary of the rights in the hearing under paragraph (3).

(2) NOTICE OF HEARING.—If a hearing is requested on a timely basis under paragraph (1)(B), the physician involved must be given notice stating—

(A) the place, time, and date, of the hearing, which date shall not be less than 30 days after the date of the notice, and

(B) a list of the witnesses (if any) expected to testify at the hearing on behalf of the professional review body.

(3) CONDUCT OF HEARING AND NOTICE.—If a hearing is requested on a timely basis under paragraph (1)(B)—

(A) subject to subparagraph (B), the hearing shall be held (as determined by the health care entity)—

(i) before an arbitrator mutually acceptable to the physician and the health care entity,

(ii) before a hearing officer who is appointed by the entity and who is not in direct economic competition with the physician involved, or

(iii) before a panel of individuals who are appointed by the entity and are not in direct economic competition with the physician involved;

(B) the right to the hearing may be forfeited if the physician fails, without good cause, to appear;

(C) in the hearing the physician involved has the right—

(i) to representation by an attorney or other person of the physician's choice,

(ii) to have a record made of the proceedings, copies of which may be obtained by the physician upon payment of any reasonable charges associated with the preparation thereof,

(iii) to call, examine, and cross-examine witnesses,

(iv) to present evidence determined to be relevant by the hearing officer, regardless of its admissibility in a court of law, and

(v) to submit a written statement at the close of the hearing; and

(D) upon completion of the hearing, the physician involved has the right—

(i) to receive the written recommendation of the arbitrator, officer, or panel, including a statement of the basis for the recommendations, and

(ii) to receive a written decision of the health care entity, including a statement of the basis for the decision.

A professional review body's failure to meet the conditions described in this subsection shall not, in itself, constitute failure to meet the standards of subsection (a)(3).

(c) ADEQUATE PROCEDURES IN INVESTIGATIONS OR HEALTH EMERGENCIES.—For purposes of section 411(a), nothing in this section shall be construed as—

(1) requiring the procedures referred to in subsection (a)(3)—

(A) where there is no adverse professional review action taken, or

(B) in the case of a suspension or restriction of clinical privileges, for a period of not longer than 14 days, during which an investigation is being conducted to determine the need for a professional review action; or

(2) precluding an immediate suspension or restriction of clinical privileges, subject to subsequent notice and hearing or other adequate procedures, where the failure to take such an action may result in an imminent danger to the health of any individual.

SEC. 413. [42 U.S.C. 11113] PAYMENT OF REASONABLE ATTORNEYS' FEES AND COSTS IN DEFENSE OF SUIT.

In any suit brought against a defendant, to the extent that a defendant has met the standards set forth under section 412(a) and the defendant substantially prevails, the court shall, at the conclusion of the action, award to a substantially prevailing party defending against any such claim the cost of the suit attributable to such claim, including a reasonable attorney's fee, if the claim, or the claimant's conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith. For the purposes of this section, a defendant shall not be considered to have substantially prevailed when the plaintiff obtains an award for damages or permanent injunctive or declaratory relief.

SEC. 414. [42 U.S.C. 11114] GUIDELINES OF THE SECRETARY.

The Secretary may establish, after notice and opportunity for comment, such voluntary guidelines as may assist the professional review bodies in meeting the standards described in section 412(a).

SEC. 415. [42 U.S.C. 11115] CONSTRUCTION.

(a) In General.—Except as specifically provided in this part, nothing in this part shall be construed as changing the liabilities or immunities under law or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this part[5].

(b) Scope of Clinical Privileges.—Nothing in this part shall be construed as requiring health care entities to provide clinical privileges to any or all classes or types of physicians or other licensed health care practitioners.

(c) Treatment of Nurses and Other Practitioners.—Nothing in this part shall be construed as affecting, or modifying any provision of Federal or State law, with respect to activities of professional review bodies regarding nurses, other licensed health care practitioners, or other health professionals who are not physicians.

(d) Treatment of Patient Malpractice Claims.—Nothing in this title shall be construed as affecting in any manner the rights and remedies afforded patients under any provision of Federal or State law to seek redress for any harm or injury suffered as a result of negligent treatment or care by any physician, health care practitioner, or health care entity, or as limiting any defenses or immunities available to any physician, health care practitioner, or health care entity.

SEC. 416. [42 U.S.C. 11111 note] EFFECTIVE DATE.

This part shall apply to professional review actions commenced on or after the date of the enactment of this Act.

PART B—REPORTING OF INFORMATION

SEC. 421. [42 U.S.C. 11131] REQUIRING REPORTS ON MEDICAL MALPRACTICE PAYMENTS.

(a) In General.—Each entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 424, information respecting the payment and circumstances thereof.

(b) Information To Be Reported.—The information to be reported under subsection (a) includes—

(1) the name of any physician or licensed health care practitioner for whose benefit the payment is made,

(2) the amount of the payment,

(3) the name (if known) of any hospital with which the physician or practitioner is affiliated or associated,

(4) a description of the acts or omissions and injuries or illnesses upon which the action or claim was based, and

(5) such other information as the Secretary determines is required for appropriate interpretation of information reported under this section.

(c) Sanctions for Failure to Report.—Any entity that fails to report information on a payment required to be reported under this section shall be subject to a civil money penalty of not more than $10,000 for each such payment involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(d) Report on Treatment of Small Payments.—The Secretary shall study and report to Congress, not later than two years after the date of the enactment of this Act, on whether information respecting small payments should continue to be required to be reported under subsection (a) and whether information respecting all claims made concerning a medical malpractice action should be required to be reported under such subsection.

SEC. 422. [42 U.S.C. 11132] REPORTING OF SANCTIONS TAKEN BY BOARDS OF MEDICAL EXAMINERS.

(a) In General.—

(1) Actions subject to reporting.—Each Board of Medical Examiners—

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[5] P.L. 100-177, §402(c) [as added by P.L. 101-239, §6103(e)(6)(A)], inserted "or as preempting or overriding any State law which provides incentives, immunities, or protection for those engaged in a professional review action that is in addition to or greater than that provided by this part".

(A) which revokes or suspends (or otherwise restricts) a physician's license or censures, reprimands, or places on probation a physician, for reasons relating to the physician's professional competence or professional conduct, or

(B) to which a physician's license is surrendered,

shall report, in accordance with section 424, the information described in paragraph (2).

(2) INFORMATION TO BE REPORTED.—The information to be reported under paragraph (1) is—

(A) the name of the physician involved,

(B) a description of the acts or omissions or other reasons (if known) for the revocation, suspension, or surrender of license, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) FAILURE TO REPORT.—If, after notice of noncompliance and providing opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (a), the Secretary shall designate another qualified entity for the reporting of information under section 423.

SEC. 423. [42 U.S.C. 11133] REPORTING OF CERTAIN PROFESSIONAL REVIEW ACTIONS TAKEN BY HEALTH CARE ENTITIES.

(a) REPORTING BY HEALTH CARE ENTITIES.—

(1) ON PHYSICIANS.—Each health care entity which—

(A) takes a professional review action that adversely affects the clinical privileges of a physician for a period longer than 30 days;

(B) accepts the surrender of clinical privileges of a physician—

(i) while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct, or

(ii) in return for not conducting such an investigation or proceeding; or

(C) in the case of such an entity which is a professional society, takes a professional review action which adversely affects the membership of a physician in the society,

shall report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3).

(2) PERMISSIVE REPORTING ON OTHER LICENSED HEALTH CARE PRACTITIONERS.—A health care entity may report to the Board of Medical Examiners, in accordance with section 424(a), the information described in paragraph (3) in the case of a licensed health care practitioner who is not a physician, if the entity would be required to report such information under paragraph (1) with respect to the practitioner if the practitioner were a physician.

(3) INFORMATION TO BE REPORTED.—The information to be reported under this subsection is—

(A) the name of the physician or practitioner involved,

(B) a description of the acts or omissions or other reasons for the action or, if known, for the surrender, and

(C) such other information respecting the circumstances of the action or surrender as the Secretary deems appropriate.

(b) REPORTING BY BOARD OF MEDICAL EXAMINERS.—Each Board of Medical Examiners shall report, in accordance with section 424, the information reported to it under subsection (a) and known instances of a health care entity's failure to report information under subsection (a)(1).

(c) SANCTIONS.—

(1) HEALTH CARE ENTITIES.—A health care entity that fails substantially to meet the requirement of subsection (a)(1) shall lose the protections of section 411(a)(1) if the Secretary publishes the name of the entity under section 411(b).

(2) BOARD OF MEDICAL EXAMINERS.—If, after notice of noncompliance and providing an opportunity to correct noncompliance, the Secretary determines that a Board of Medical Examiners has failed to report information in accordance with subsection (b), the Secretary shall designate another qualified entity for the reporting of information under subsection (b).

(d) REFERENCES TO BOARD OF MEDICAL EXAMINERS.—Any reference in this part to a Board of Medical Examiners includes, in the case of a Board in a State that fails to meet the reporting requirements of section 422(a) or subsection (b), a reference to such other qualified entity as the Secretary designates.

SEC. 424. [42 U.S.C. 11134] FORM OF REPORTING.

(a) TIMING AND FORM.—The information required to be reported under sections 421, 422(a), and 423 shall be reported regularly (but not less often than monthly) and in such form and manner as the Secretary prescribes. Such information shall first be required to be reported on a date (not later than one year after the date of the enactment of this Act) specified by the Secretary.

(b) To Whom Reported.—The information required to be reported under sections 421, 422(a), and 423(b) shall be reported to the Secretary, or, in the Secretary's discretion, to an appropriate private or public agency which has made suitable arrangements with the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of the information under this part.

(c) Reporting to State Licensing Boards.—

(1) Malpractice payments.—Information required to be reported under section 421 shall also be reported to the appropriate State licensing board (or boards) in the State in which the medical malpractice claim arose.

(2) Reporting to other licensing boards.—Information required to be reported under section 423(b) shall also be reported to the appropriate State licensing board in the State in which the health care entity is located if it is not otherwise reported to such board under subsection (b).

SEC. 425. [42 U.S.C. 11135] DUTY OF HOSPITALS TO OBTAIN INFORMATION.

(a) In General.—It is the duty of each hospital to request from the Secretary (or the agency designated under section 424(b)), on and after the date information is first required to be reported under section 424(a))[a]—

(1) at the time a physician or licensed health care practitioner applies to be on the medical staff (courtesy or otherwise) of, or for clinical privileges at, the hospital, information reported under this part concerning the physician or practitioner, and

(2) once every 2 years information reported under this part concerning any physician or such practitioner who is on the medical staff (courtesy or otherwise) of, or has been granted clinical privileges at, the hospital.

A hospital may request such information at other times.

(b) Failure to Obtain Information.—With respect to a medical malpractice action, a hospital which does not request information respecting a physician or practitioner as required under subsection (a) is presumed to have knowledge of any information reported under this part to the Secretary with respect to the physician or practitioner.

(c) Reliance on Information Provided.—Each hospital may rely upon information provided to the hospital under this title and shall not be held liable for such reliance in the absence of the hospital's knowledge that the information provided was false.

SEC. 426. [42 U.S.C. 11136] DISCLOSURE AND CORRECTION OF INFORMATION.

With respect to the information reported to the Secretary (or the agency designated under section 424(b)) under this part respecting a physician or other licensed health care practitioner, the Secretary shall, by regulation, provide for—

(1) disclosure of the information, upon request, to the physician or practitioner, and

(2) procedures in the case of disputed accuracy of the information.

SEC. 427. [42 U.S.C. 11137] MISCELLANEOUS PROVISIONS.

(a) Providing Licensing Boards and Other Health Care Entities With Access to Information.—The Secretary (or the agency designated under section 424(b)) shall, upon request, provide information reported under this part with respect to a physician or other licensed health care practitioner to State licensing boards, to hospitals, and to other health care entities (including health maintenance organizations) that have entered (or may be entering) into an employment or affiliation relationship with the physician or practitioner or to which the physician or practitioner has applied for clinical privileges or appointment to the medical staff.

(b) Confidentiality of Information.—

(1) In general.—Information reported under this part is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 425 (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this part that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 424(b)), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

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[a] As in original; closing parenthesis should be deleted.

(2) PENALTY FOR VIOLATIONS.—Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A of the Social Security Act are imposed and collected under that section.

(3) USE OF INFORMATION.—Subject to paragraph (1), information provided under section 425 and subsection (a) is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) FEES.—The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 426. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 424(b)) to cover such costs.

(c) RELIEF FROM LIABILITY FOR REPORTING.—No person or entity (including the agency designated under section 424(b)) shall be held liable in any civil action with respect to any report made under this part (including information provided under subsection (a) without knowledge of the falsity of the information contained in the report.

(d) INTERPRETATION OF INFORMATION.—In interpreting information reported under this part, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

PART C—DEFINITIONS AND REPORTS

SEC. 431. [42 U.S.C. 11151] DEFINITIONS.

In this title:

(1) The term "adversely affecting" includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term "Board of Medical Examiners" includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term "clinical privileges" includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term "health care entity" means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term "health care entity" does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term "hospital" means an entity described in paragraphs (1) and (7) of section 1861(e) of the Social Security Act.

(6) The terms "licensed health care practitioner" and "practitioner" mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term "medical malpractice action or claim" means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term "physician" means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term "professional review action" means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this title, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter than does not relate to the competence or professional conduct of a physician.

(10) The term "professional review activity" means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term "professional review body" means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term "Secretary" means the Secretary of Health and Human Services.

(13) The term "State" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term "State licensing board" means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

SEC. 432. [42 U.S.C. 11152] REPORTS AND MEMORANDA OF UNDERSTANDING.

(a) Annual Reports to Congress.—The Secretary shall report to Congress, annually during the three years after the date of the enactment of this Act, on the implementation of this title.

(b) Memoranda of Understanding.—The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of part B of this title to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of Understanding with Drug Enforcement Administration.—The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or revoked under section 304 of the Controlled Substances Act. The Secretary shall report to Congress, not later than two years after the date of the enactment of this Act, on any such memorandum and on the cooperation between the Secretary and the Administrator in establishing such a memorandum.

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[*Internal References.*—S.S. Act §1921(b) and (d) cites the Health Care Quality Improvement Act of 1986 and S.S. Act title XVIII catchline has a footnote referring to P.L. 99-660.]

P.L. 100-77, Approved July 22, 1987 (101 Stat. 482)
Stewart B. McKinney Homeless Assistance Act

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TITLE VII—EDUCATION, TRAINING, AND COMMUNITY SERVICES PROGRAMS

* * * * * * *

Subtitle E—Miscellaneous Provisions

SEC. 761. [42 U.S.C. 11471**] STUDY OF YOUTH HOMELESSNESS.**

(a) AUTHORIZATION.—The Secretary of Health and Human Services may make demonstration grants to a qualified applicant for a special research project to study the underlying causes of youth homelessness.

(b) FUNDING.—The Secretary of Health and Human Services shall make available not to exceed $50,000 of the funds appropriated under section 426 of the Social Security Act for fiscal year 1987 for the purpose of making a grant under this section.

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[*Internal Reference.*—S.S. Act §426 catchline has a footnote referring to P.L. 100-77.]

P.L. 100-93, Approved August 18, 1987 (101 Stat. 680)
Medicare and Medicaid Patient and Program Protection Act of 1987

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) [42 U.S.C. 1305 note] SHORT TITLE.—This Act may be cited as the "Medicare and Medicaid Patient and Program Protection Act of 1987".

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SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.

(a) [42 U.S.C. 1320a-7b note] REGULATIONS.—The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).

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SEC. 15. EFFECTIVE DATES.

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(f) [42 U.S.C. 1320a-7 note] TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII if payment to the person has been denied under section 1862(d) of the Social Security Act, as in effect before the effective date specified in subsection (a).

[*Internal References.*—S.S. Act §§1128A(a), 1128B(b), and 1862(e) cite the Medicare and Medicaid Patient and Program Protection Act of 1987 and S.S. Act title XVIII catchline and §1128B(b) have footnotes referring to P.L. 100-93.]

P.L. 100-119, Approved September 29, 1987 (101 Stat. 754)
Title I - Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987

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SEC. 107. SPECIAL RULES FOR MEDICARE PROGRAM.

(a) [42 U.S.C. 1395ww note] Temporary Extension of Payment Policies for Inpatient Hospital Services.—

(1) In general.—Notwithstanding any other provision of law, with respect to payment for inpatient hospital services under section 1886 of the Social Security Act:

(A) Temporary freeze in pps hospital rates.—For purposes of subsection (d) of such section for discharges occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the "extension period"), the applicable percentage increase under subsection (b)(3)(B) of such section with respect to fiscal year 1988 is deemed to be 0 percent.

(B) Temporary freeze in payment basis.—

(i) Extension of blended drg rate.—For purposes of subsection (d)(1) of such section, the "applicable combined adjusted DRG prospective payment rate" for discharges occurring—

(I) during the extension period is the rate specified in subsection (d)(1)(D)(ii) of such section, or

(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

(ii) Extension of hospital-specific payment.—For the first 51 days of a hospital cost reporting period beginning during fiscal year 1988, payment shall be made under clause (ii) (rather than clause (iii)) of subsection (d)(1)(A) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent.

(C) Temporary freeze in amounts of payment for capital.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

(D) Temporary freeze in return on equity reductions.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, subsection (g)(2) of such section shall be applied as though the applicable percentage were 75 percent.

(E) Temporary freeze in payments rates for pps-exempt hospitals.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.

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(b) [42 U.S.C. 1395ww note] Freezing Certain Changes in Medicare Payment Regulations and Policies.—

(1) In general.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

(B) any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

(C) any final regulation that changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services.

The final regulation of the Health Care Financing Administration published on September 1, 1987 (52 Federal Register 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

(2) Other cost savings policies.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

(3) Exception.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 (relating to periodic interim payments).

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[*Internal Reference.*—S.S. Act §1886 catchline has a footnote referring to P.L. 100-119.]

P.L. 100-139, Approved October 26, 1987 (101 Stat. 822)

Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of 1987

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Sec. 3. [None assigned.] **JUDGMENT DISTRIBUTION PLAN.**

Notwithstanding Public Law 93-134 (25 U.S.C. 1401, et seq.), or any plan prepared or promulgated by the Secretary pursuant to such Act, the judgment funds awarded in United States Claims Court docket numbered 53-81L shall be distributed and used in the manner provided in this Act.

* * * * * * *

Sec. 4. [None assigned.] **DISTRIBUTION AND USE OF FUNDS.**

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(h) General Conditions.—The following conditions will apply to the management and use of the judgment funds by the tribe's governing body:

* * * * * * *

(6) Benefits received pursuant to this Act shall be considered supplementary to existing Federal programs and their existence shall not be used by any Federal agency as a basis to deny eligibility in whole or in part for existing Federal programs.

* * * * * * *

[*Internal References.*—S.S. Act title IV, part B, §§1612(b) and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 100-139.]

P.L. 100-177, Approved December 1, 1987 (101 Stat. 986)

Public Health Service Amendments of 1987

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SEC. 204. [42 U.S.C. 254o note] SPECIAL REPAYMENT PROVISIONS.

(a) Eligible Individuals.—

(1) In general.—An individual who—

(A)(i) breached a written contract entered into under section 338A of the Public Health Service Act (42 U.S.C. 254l) by failing either to begin such individual's service obligation in accordance with section 338C of such Act (as redesignated by section 201(2) of this Act) or to complete such service obligation; or

(ii) otherwise breached such a contract; and

(B) as of November 1, 1987, is liable to the United States under section 338E(b) of such Act (as redesignated by section 201(2) of this Act),

shall be relieved of liability to the United States under such section if the individual provides notice to the Secretary in accordance with paragraph (2) and provides service in accordance with a written contract with the Secretary that obligates the individual to provide service in accordance with subsection (b) or (c). The Secretary may exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

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[*Internal Reference*.—S.S. Act §1892(a) cites the Public Health Service Amendments of 1987.]

P.L. 100-203, Approved December 22, 1987 (101 Stat. 1330)

Omnibus Budget Reconciliation Act of 1987

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Sec. 4001. [2 U.S.C. 902 note] EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through—

(1) March 31, 1988, with respect to payments for inpatient hospital services under such title (including payments under section 1886 of such title attributable or allocated to part A of such title); and

(2) December 31, 1987, with respect to payments for other items and services under part A of such title.

Sec. 4002. BASIC HOSPITAL PROSPECTIVE PAYMENT RATES.

* * * * * * *

(g) [42 U.S.C. 1395ww note] Effective Dates.—

(1) PPS hospitals, drg portion of payment.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

(A) the amendments made by subsections (a) and (c) shall apply to payments made under section 1886(d)(1)(A)(iii) of the Social Security Act on the basis of discharges occurring on or after April 1, 1988, and

(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B) of such Act) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

(2) PPS sole community hospitals, hospital specific portion of payment.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act because it is a sole community hospital—

(A) the amendment made by subsections (a) and (c) shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act) for the—

(i) first 51 days of the cost reporting period shall be 0 percent,

(ii) next 132 days of such period shall be 2.7 percent, and

(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

(3) PPS-exempt hospitals.—In the case of a hospital that is not a subsection (d) hospital—

(A) the amendments made by subsection (e) shall apply to cost reporting periods beginning on or after October 1, 1987;

(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act were equal to the product of 2.7 percent and the ratio of 315 to 366; and

(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

* * * * * * *

(5) Transition for large urban area rates.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act (as amended by subsection (c)) for fiscal year 1988, the reference to "the respective average standardized amount computed for the previous fiscal year under this subparagraph" is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

(6) Definition.—In this subsection, the term "subsection (d) hospital" has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act.

Sec. 4003. INCREASE IN DISPROPORTIONATE SHARE ADJUSTMENT AND REDUCTION IN INDIRECT MEDICAL EDUCATION PAYMENTS.

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(d) [None assigned.] Special Rule.—In the case of a hospital which—

(1) consists of 2 inpatient hospital facilities which are more than 4 miles apart and each of which is in a separate political jurisdiction within the same State and one of which meets the criteria under section 1886(d)(5)(F) of the Social Security Act for serving a significantly disproportionate number of low-income patients as if that facility were a separate hospital; and

(2) receives payments (other than under section 1886(d)(5)(F) of such Act) for inpatient hospital services under title XVIII of the Social Security Act which are less than the hospital's reasonable costs of such services,

the Secretary of Health and Human Services, upon application by the hospital, may treat each of the facilities of the hospital as separate hospitals for purposes of applying section 1886(d)(5)(F) of the Social Security Act, for discharges occurring on or after October 1, 1988.

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Sec. 4004. PROVISIONS RELATING TO WAGE INDEX.

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(b) [42 U.S.C. 1395ww note] Clinic Hospital Wage Indices.—In calculating the wage index under section 1886(d) of the Social Security Act for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983, the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term "wage costs" does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.

Sec. 4005. RURAL HOSPITALS.

(a) Revision of Standards for Including a Rural County in an Urban Area.—

* * * * * * *

(2) [None assigned.] Location of hospital.—For purposes of section 1886 of the Social Security Act, Watertown Memorial Hospital in Watertown, Wisconsin is deemed to be located in Jefferson County, Wisconsin.

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(b) Expansion of Swing-Bed Program.—

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(3) [42 U.S.C. 1395tt note] REPORT.—The Secretary of Health and Human Services shall report to Congress, not later than February 1, 1989, concerning—

(A) the proportion of admissions to hospitals for extended care services under section 1883 of the Social Security Act which are denied or approved by a peer review organization under section 1154(a)(1) of such Act, and

(B) recommendations for methods of encouraging hospitals that—

(i) have a low occupancy rate,

(ii) are eligible to enter (but have not entered) into an agreement under section 1883 of such Act, and

(iii) are located in areas with a need for additional providers of extended care services,

to enter into such agreements.

* * * * * * *

(c) PAYMENTS TO SOLE COMMUNITY HOSPITALS.—

* * * * * * *

(2) * * *

(B) [42 U.S.C. 1395ww note] The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act by reason of the amendment made by paragraph (1)(B) does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.

(d) MEDICARE CLASSIFICATION OF RURAL REFERRAL CENTERS.—

* * * * * * *

(2) [42 U.S.C. 1395ww note] STUDY.—

(A) IN GENERAL.—The Secretary of Health and Human Services shall provide for a study of the criteria used for the classification of hospitals as rural referral centers under section 1886(d)(5)(C)(i) of the Social Security Act. The study shall include an examination of—

(i) the extent that hospitals classified as rural referral centers receive more or less than their actual costs of providing inpatient hospital services, and

(ii) the appropriateness of providing for payment for such centers at a rate other than the rate for a hospital located in an other urban area.

(B) REPORT.—The Secretary shall report to Congress, by not later than March 1, 1989, on the study conducted under subparagraph (A) and on recommendations for the criteria that should be applied under section 1886(d)(5)(C)(i) of the Social Security Act for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after October 1, 1989.

(e) [42 U.S.C. 1395ww note] GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION.—

(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

(A) Changes in clinical practice patterns.

(B) Changes in service populations.

(C) Declining demand for acute-care inpatient hospital capacity.

(D) Declining ability to provide appropriate staffing for inpatient hospitals.

(E) Increasing demand for ambulatory and emergency services.

(F) Increasing demand for appropriate integration of community health services.

(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems. Grants under this paragraph may be used to provide instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act) as are designated either class 1 or class 2 health manpower shortage areas under section 332(a)(1)(A) of the Public Health Service Act.[1]

(2) For purposes of this subsection, the term "eligible small rural hospital" means any non-Federal, short-term general acute care hospital that—

(A) is located in a rural area (as determined in accordance with subsection (d)),

(B) has less than 100 beds, and

(C) is not for profit.

(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Administrator and a copy of such application to the[2] Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

(B) The Governor shall transmit to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A),[3] any comments with respect to the application that the Governor deems appropriate.

(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act.

(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

(A) any comments received under paragraph (3)(B) with respect to a proposed project;

(B) the effect that the project will have on—

(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

(i) the primary market or service area of the hospital, and

(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

(D) the degree of coordination that may be expected between the proposed project and—

(i) other local or regional health care providers, and

(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 3[4] years.

(7)(A) Except as provided in subparagraphs (B)[5] and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of section 1886(a)(4) of the Social Security Act) of the project, except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D)[6].

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[1] P.L. 101-239, §6003(g)(1)(B)(i)(I), added this sentence.

[2] P.L. 101-239, §6003(g)(1)(B)(i)(II), inserted "Administrator and a copy of such application to the".

[3] P.L. 100-239, §6003(g)(1)(B)(i)(III), struck out "any application submitted pursuant to subparagraph (A) to the Secretary not later than 30 days after it is received by the Governor, accompanied by" and substituted "to the Administrator, within a reasonable time after receiving a copy of an application pursuant to suparagraph (A),".

[4] P.L. 101-239, §6003(g)(1)(B)(i)(IV), struck out "2" and substituted "3".

[5] P.L. 101-239, §6003(g)(1)(B)(i)(V), struck out "(D)" and substituted "(B)".

(D) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820 of the Social Security Act) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).[7]

(8)(A) A hospital receiving a grant under this section shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

(B) The Administrator shall report to the Congress at least once every 6 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for fiscal year 1989 and $25,000,000 for each of the fiscal years 1990, 1991, and 1992[8].

SEC. 4006. PAYMENTS FOR HOSPITAL CAPITAL.

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(c) [None assigned.] PROPAC REPORT ON ADJUSTMENT FOR HOSPITAL OCCUPANCY.—The Prospective Payment Assessment Commission shall study and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, by not later than May 1, 1988, on the suitability and feasibility of linking payment for capital-related costs under part A of title XVIII of the Social Security Act to hospital occupancy rates.

SEC. 4007. [42 U.S.C. 1395ww note] REPORTING HOSPITAL INFORMATION.

(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act, which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updated analysis of the differences between preliminary and settled cost reports).

* * * * * * *

(c) DEMONSTRATION PROJECT.—

(1) The Secretary of Health and Human Services shall provide for a demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In conducting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

(2) The information described in this paragraph is as follows:

(A) Hospital discharges (classified by class of primary payer).

(B) Patient days (classified by class of primary payer).

(C) Licensed beds, staffed beds, and occupancy.

(D) Inpatient charges and revenues (classified by class of primary payer).

(E) Outpatient charges and revenues (classified by class of primary payer).

(F) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

(G) Reasonable costs.

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[6] P.L. 101-239, §6003(g)(1)(B)(i)(VI), inserted ", except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D)".

[7] P.L. 101-239, §6003(g)(1)(B)(i)(VII), added subparagraph (D).

[8] P.L. 101-239, §6003(g)(1)(B)(i)(VIII), struck out "each of the fiscal years 1989 and 1990" and substituted "fiscal year 1989 and $25,000,000 for each of the fiscal years 1990, 1991, and 1992".

(H) Other income.
(I) Bad debt and charity care.
(J) Capital acquisitions.
(K) Capital assets.

The Secretary shall develop a definition of "outpatient visit" for purposes of reporting hospital information.

(3) The Secretary shall develop the system under subsection (c) in a manner so as —

(A) to facilitate the submittal of the information in the report in an electronic form, and

(B) to be compatible with the needs of the medicare prospective payment system.

(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

(5) In paragraph (2):

(A) The term "bad debt and charity care" has such meaning as the Secretary establishes.

(B) The term "class" means, with respect to payers at least, the programs under this title XVIII of the Social Security Act, a State plan approved under title XIX of such Act, other third party-payers, and other persons (including self-paying individuals).

(6) The Secretary shall set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds to develop the format, according to paragraph (1) and for data collection and analysis, but total funds shall not exceed $15,000,000.

(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.

SEC. 4008. OTHER PROVISIONS RELATING TO PAYMENT FOR INPATIENT HOSPITAL SERVICES.

(a) [None assigned.] MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this Act, and before January 1, 1989, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

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(c) [42 U.S.C. 1395f note] CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES.—In making payments to hospitals under title XVIII of the Social Security Act, the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency). The Secretary may not require a hospital to change its bad debt collection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.*

(d) [42 U.S.C. 1395ww note] HOSPITAL OUTLIER PAYMENTS AND POLICY.—

(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

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*P.L. 101-239, §6023(a), added this sentence.

(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occurring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886(d) of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act.

(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act and additional payments under section 1886(d)(5)(A) of such Act.

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SEC. 4009. MISCELLANEOUS PROVISIONS.

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(b) [42 U.S.C. 1395y note] DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY.—For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act, the Secretary shall treat such a hospital as meeting such criteria if—

(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

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(h) [42 U.S.C. 1395ww note] PROPAC STUDIES AND REPORTS.—

(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D))[10] of the Social Security Act) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and

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[10] As in original. Closing parenthesis should be stricken.

appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.

(i) [42 U.S.C. 1395ww note] SPECIAL RULE.—In the case of urban areas in New England, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act, as amended by section 4002(b) of this subtitle, as though 970,000 were substituted for 1,000,000.

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SEC. 4012. PAYMENTS FOR HOSPITAL SERVICES.

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(c) [42 U.S.C. 1395mm note] IMPLEMENTATION.—The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act medicare DRG rates for payments required by the amendment made by subsection (a) and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.

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SEC. 4015. [42 U.S.C. 1395mm note] MEDICARE PAYMENT DEMONSTRATION PROJECTS.

(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") may provide for capitation demonstration projects (in this subsection referred to as "projects") with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act or which meets the restrictions and requirements of this subsection. The Secretary may not approve a project unless it meets the requirements of this subsection.

(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act, more than $600,000,000 in any fiscal year for all such projects.

(3) The per capita rate of payment under a project—

(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

(B) the rate of payment may not exceed the lesser of—

(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act) for classes of individuals described in section 1876(a)(1)(B) of that Act, or

(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4)) for such classes.

(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act), the project—

(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

(6) The requirements of—

(A) subsection (c)(3)(C) (relating to dissemination of information),

(B) subsection (c)(3)(E) (annual statement of rights),

(C) subsection (c)(5) (grievance procedures),

(D) subsection (c)(6) (on-going quality),

(E) subsection (g)(6) (relating to prompt payment of claims),

(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

(G) subsection (i)(6) (relating to providing necessary services), and

(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act and the benefits available through any alternative plans in which the individual can enroll through the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

(8) A project shall comply with all applicable State laws.

(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

(b) Payment Methodology Reform Demonstrations Projects.—

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act, including—

(A) computing adjustments to the average per capita cost under section 1876 of such Act on the basis of health status or prior utilization of services, and

(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

(2) No project may be conducted under this subsection—

(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act), and

(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act.

(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

(c) Application of Provisions.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.

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Sec. 4017. [42 U.S.C. 1395mm note] GAO STUDY AND REPORTS ON MEDICARE CAPITATION.

(a) Study.—The Comptroller General shall conduct a study on medicare capitation rates that shall include an analysis and assessment of—

(1) the current method for computing per capita rates of payment under section 1876 of the Social Security Act (including the method for determining the United States per capita cost);

(2) the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors;

(3) ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act (including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas);

(4) the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in

utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means;

(5) approaches for limiting the liability of the contracting organization under section 1876 of such Act in catastrophic cases;

(6) ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and

(7) methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas (while maintaining cost savings).

(b) REPORTS.—

(1) Not later than January 1 of 1989 and 1990, the Comptroller General shall submit to the Committee on Finance of the Senate and the Committee on Energy and Commerce and Committee on Ways and Means of the House of Representatives interim reports on the progress of the study conducted under subsection (a).

(2) Not later than January 1, 1991, the Comptroller General shall submit to each such committee a final report on the results of such study.

SEC. 4018. SPECIAL RULES.

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(b) [None assigned.] EXTENSION OF WAIVERS FOR SOCIAL HEALTH MAINTENANCE ORGANIZATIONS.—

(1) The Secretary of Health and Human Services shall extend without interruption, through September 30, 1992, the approval of waivers granted under subsection (a) of section 2355 of the Deficit Reduction Act of 1984 for the demonstration project described in subsection (b) of that section, subject to the terms and conditions (other than duration of the project) established under that section (as amended by paragraph (2) of this subsection).

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(4) The Secretary of Health and Human Services shall submit a final report to the Congress on the project referred to in paragraph (1) not later than March 31, 1993.

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SEC. 4026. HOME HEALTH AGENCY COST LIMITS.

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(b) [None assigned.] STUDY OF LIMITS.—The Secretary of Health and Human Services shall study and report to the Congress, not later than June 1, 1989, on—

(1) whether the separate schedules of cost limits currently applied to home health agencies under title XVIII of the Social Security Act located in urban and rural areas accurately reflect differences in the costs of urban and rural home health agencies, and

(2) the appropriateness of modifying such limits to take into account the proportion of agency patients who are from urban and rural areas.

SEC. 4027. [42 U.S.C. 1395n note] HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs. The project shall be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations. The Secretary shall assure that services are first furnished under the project not later than April 1, 1989, and, for this purpose, the Secretary may reinstate a previously awarded contract, or award a sole source contract, to carry out the project.

(b) FUNDING.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 shall apply to the demonstration project under subsection (a) of this section as they apply to experiments under subsection (a)(1) of that section.

(c) REPORT.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act, an interim report on the demonstration project and, not later than four years after the date of the enactment of this Act, a final report on the results of the project.

Sec. 4031. PAYMENT CYCLE STANDARDS.

(a) Payment Floor Standards.—

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(3) * * *

(B) [42 U.S.C. 1395h note] The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this subsection on a timely basis.

(b) [42 U.S.C. 1395h note] Prohibition of Other Policies Intended to Slow Down Medicare Payments.—Notwithstanding any other provision of law, except as specifically provided in this section, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

(c) [42 U.S.C. 1395h note] Budget Considerations.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, this section is a necessary (but secondary) result of a significant policy change.

Sec. 4032. DENIALS AND RECONSIDERATIONS OF CLAIMS FOR HOME HEALTH SERVICES, EXTENDED CARE SERVICES, AND POST-HOSPITAL EXTENDED CARE SERVICES.

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(c) Effective Date.—

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(2) [42 U.S.C. 1395h note] The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 and contracts under section 1842 of the Social Security Act, and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) on a timely basis.

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Sec. 4036. END-STAGE RENAL DISEASE AMENDMENTS.

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(d) Studies of End-Stage Renal Disease Program.—

(1) [42 U.S.C. 1395rr note] The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall arrange for a study of the end-stage renal disease program within the medicare program.

(2) [42 U.S.C. 1395rr note] Among other items, the study shall address—

(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

(C) the effect of reimbursement on quality of treatment;

(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

(3) [42 U.S.C. 1395rr note] The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act, a report on the study.

(4) [42 U.S.C. 1395rr note] The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

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SEC. 4037. [42 U.S.C. 1395ff note] MEDICARE HEARINGS AND APPEALS.

(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act.

(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act.

(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).

SEC. 4038. [42 U.S.C. 1395ww note] RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with 10[11] sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

(c) SELECTION.—(1)[12] In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

(A)[13] two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

(B)[14] two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

(2) The provisions of paragraph (1) shall not apply with respect to applications submitted as a result of amendments made by section 6216 of the Omnibus Budget Reconciliation Act of 1989.[15]

(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act—

(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act (or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989, in the case of a project conducted as a result of the amendments made by section 6216 of such Act)[16] and shall be conducted for a period of three years.

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[11] P.L. 101-239, §6216(a), struck out "four" and substituted "10".
[12] P.L. 101-239, §6216(b)(1), inserted "(1)".
[13] P.L. 101-239, §6216(b)(2), redesignated the former paragraph (1) as subparagraph (A).
[14] P.L. 101-239, §6216(b)(2), redesignated the former paragraph (2) as subparagraph (B).
[15] P.L. 101-239, §6216(b)(3), added this paragraph (2).

(f) Definition.—In this section, the term "sponsoring hospital" means a hospital that receives payments under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act.

Sec. 4039. MISCELLANEOUS AND TECHNICAL PROVISIONS.

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(d) [42 U.S.C. 1395ww note] Extend and Clarify Prohibition on Cost Savings Policies Before Beginning of Fiscal Year.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act and before October 15, 1990[17], any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991[18] of more than $50,000,000.

(e) [42 U.S.C. 1395x note] Moratorium on Prior Authorization for Home Health and Post-Hospital Extended Care Services.—The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986.

(f) [42 U.S.C. 1395x note] Delay in Publishing Regulations with Respect to Deeming the Status of Entities.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act) for purposes of title XVIII of such Act—

(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

(2) until the Secretary publishes a final rule with respect to the deeming of the entity.

(g) [42 U.S.C. 1395hh note] Use of Interim Final Regulations.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle.

Sec. 4041. FREEZE IN PAYMENTS FOR PHYSICIANS' SERVICES; EXTENSION OF SEQUESTER ORDER.

(a) Three-Month Freeze on Increases in Physician Payments.—

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(2) [42 U.S.C. 1395u note] Extension of physician participation agreements and related provisions.—Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall remain in effect for the 3-month period beginning on January 1, 1988;

(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

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[16] P.L. 101-239, §6216(c), inserted "(or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989, in the case of a project conducted as a result of the amendments made by section 6216 of such Act)".

[17] P.L. 101-239, §6207(b)(1), struck out "1989" and substituted "1990".

[18] P.L. 101-239, §6207(b)(2), inserted "or in fiscal year 1991".

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.

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(b) [2 U.S.C. 902 note] EXTENSION OF REDUCTION UNDER SEQUESTER ORDER.—Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for physicians' services under part B of such title.

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SEC. 4043. INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS.

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(b) [Repealed.[19]]

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SEC. 4048. PAYMENT FOR PHYSICIAN ANESTHESIA SERVICES.

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(b) [42 U.S.C. 1395u note] DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE.—The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act on and after March 1, 1989[20]. Such guide shall be designed so as to result in expenditures under such title for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(c) [Repealed.[21]]

(d) [42 U.S.C. 1395u note] GAO STUDIES.—(1) The Comptroller General shall conduct a study—

(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

(B) to verify those times from patient medical records,

(C) to compare anesthesia times to average surgical times, and

(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a), and shall report to Congress on the results of such study by April 1, 1990.

SEC. 4049. FEE SCHEDULES FOR RADIOLOGIST SERVICES.

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(b) DEADLINES AND EFFECTIVE DATE.—

(1) [42 U.S.C. 1395m note] The Secretary of Health and Human Services shall propose the relative value scale and fee schedules for radiologist services (under section 1834(b) of the Social Security Act) by not later than August 1, 1988[22].

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SEC. 4050. [Repealed.[23]]

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[19] P.L. 101-508, §4118(g)(1); 104 Stat. 1388-70.

[20] P.L. 101-508, §4118(h)(1), struck out "January 1, 1989" and substituted "March 1, 1989".

[21] P.L. 101-508, §4118(g)(2); 104 Stat. 1388-70.

[22] P.L. 101-508, §4118(g)(3), struck out ", and shall report to Congress on the development of such fee schedules not later than August 1, 1988".

[23] P.L. 101-508, §4104(b)(3); 104 Stat. 1388-59.

Sec. 4051. ELIMINATION OF MARKUP FOR CERTAIN PURCHASED SERVICES.

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(b) [42 U.S.C. 1395u note] Adjustment in Medicare Prevailing Charges.—

(1) Review.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act for diagnostic tests (described in section 1861(s)(3) of such Act, but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

(2) Establishment of revised payment screens.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.

(c) [42 U.S.C. 1395u note] Effective Dates.—

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(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) for items and services furnished no later than January 1, 1989.

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Sec. 4054. APPLICATION OF MAXIMUM ALLOWABLE ACTUAL CHARGE (MAAC).

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(b) [42 U.S.C. 1395u note] Adjustment.—In the case of a physician who did not have actual charges under title XVIII of the Social Security Act for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.

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Sec. 4056. PHYSICIAN PAYMENT STUDIES.

(a) [42 U.S.C. 1395u note] Definitions of Medical and Surgical Procedures.—

(1) Report on variations in carrier payment practice.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation.[24]

(2) Uniform definitions of procedures for payment purposes.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act. In developing such definitions, to the extent practicable—

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[24] P.L. 101-508, §4118(g)(4), struck out "The Secretary shall report to Congress on such study by not later than May 1, 1988.".

(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

(B) pre- and post-procedure services would be included in the procedure; and

(C) similar procedures would be listed together if the procedures are similar in resource requirements.

(b) [42 U.S.C. 1395w-1 note] Expansion of Relative Value Scale (RVS) Study.—

(1) Additional services.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act, to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy, and for physicians who specialize in osteopathic procedures.

(2) No delay in current study.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act.[25]

(3) Prompt submittal of study results to physician payment review commission.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a cooperative agreement in the fulfillment of the requirement of section 1845(e) of such Act, with all relevant supporting data (including survey data, analytic data files, and file documentation), by no later than 30 days after the date the final report is received by the Secretary.

(c) [42 U.S.C. 1395l note] Other Physician Payment Studies.—

(1) Fee schedule implementation.—The Secretary shall conduct a study of changes in the payment system for physicians' services, under part B of title XVIII of the Social Security Act, that would be required for the implementation of a national fee schedule for such services furnished on or after January 1, 1990. Such study shall identify any major technical problems related to such implementation and recommendations on ways in which to address such problems. The Secretary shall report to the Congress on such study by not later than July 1, 1989.

(2) Volume and intensity of physician services.—The Secretary shall conduct a study of issues relating to the volume and intensity of physicians' services under part B of title XVIII of the Social Security Act, including—

(A) historical trends with regard to increases in the volume and intensity of physicians' services furnished on a per enrollee basis (with appropriate adjustments to account for changes in the demographic composition of the medicare population);

(B) geographic variations in volume and intensity in physicians' services;

(C) an analysis of the effectiveness of methods currently used under such part to ensure that payments under such part are made only for services which are medically necessary;

(D) the development and analysis of alternative methods to control the volume of services; and

(E) the impact of the implementation of the relative value scale developed under section 1845(e) of such Act on the volume and intensity of physicians' services.

The Secretary shall submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989.

(3) Survey of out-of-pocket costs of medicare beneficiaries for health care services.—The Secretary shall conduct a survey to determine the distribution of—

(A) the liabilities and expenditures for health care services of individuals entitled to benefits under title XVIII of the Social Security Act, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and

(B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized.

The Secretary shall report to Congress on such study by not later than July 1, 1990.

(d) [42 U.S.C. 1395l note] Study of Payment for Chemotherapy in Physicians' Offices.—

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[25] P.L. 101-508, §4118(g)(5), struck out "The Secretary shall report to Congress on the services described in paragraph (1) by not later than October 1, 1989."

(1) IN GENERAL.—The Secretary shall study ways of modifying part B of title XVIII of the Social Security Act to permit adequate payment under such part for the costs associated with providing chemotherapy to cancer patients in physicians' offices. The study shall be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues.

(2) REPORT.—The Secretary shall report to Congress on the results of the study by not later than April 1, 1989.

SEC. 4061. [2 U.S.C. 902 note] EXTENSION OF REDUCTION FOR OTHER PART B ITEMS AND SERVICES PAYMENTS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on November 20, 1987, pursuant to section 252(b) of the Balanced Budget Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1988, with respect to payments for all items and services (other than physicians' services) under part B of such title.

SEC. 4062. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.

(a) [42 U.S.C. 1395u note] 1-YEAR FREEZE ON CHARGE LIMITATIONS.—

(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.

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(c) [42 U.S.C. 1395m note] STUDY AND EVALUATION.—(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act.

(3) In this subsection, the term "covered item" has the meaning given such term in section 1834(a)(13) of the Social Security Act (as amended by subsection (b) of this section).

(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act, but only in a form which does not permit identification of individual suppliers.

(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

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SEC. 4063. PAYMENT FOR INTRAOCULAR LENSES.

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(d) [42 U.S.C. 1395u note] SPECIAL RULE.—With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act, in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with "plus" shall be considered to have been deleted.

SEC. 4064. CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) [42 U.S.C. 1395l note] LIMITATION ON CHANGES IN FEE SCHEDULES.—

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(b) FEE SCHEDULES AND PAYMENT LIMITS.—

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(4) [42 U.S.C. 1395l note] GAO STUDY OF FEE SCHEDULES.—The Comptroller General shall conduct a study of the level of the fee schedules established for clinical diagnostic laboratory services under section 1833(h)(2) of the Social Security Act to determine, based on the costs of, and revenues received for, such tests the appropriateness of such schedules. The Comptroller General shall report to the Congress on the results of such study by not later than January 1, 1990. Suppliers of such tests which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act.

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SEC. 4067. UPDATING MAXIMUM RATE OF PAYMENT PER VISIT FOR INDEPENDENT RURAL HEALTH CLINICS.

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(b) [42 U.S.C. 1395l note] REPORT ON RATES.—The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act for rural health clinic services provided by independent rural health clinics.

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SEC. 4071. COVERAGE OF INFLUENZA VACCINE AND ITS ADMINISTRATION.

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(b) [42 U.S.C. 1395x note] CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The provisions of subsection (e) of section 4072 of this subpart shall apply to this section in the same manner as it applies to section 4072.

(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.

SEC. 4072. PAYMENT FOR THERAPEUTIC SHOES FOR INDIVIDUALS WITH SEVERE DIABETIC FOOT DISEASE.

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(e) [42 U.S.C. 1395x note] CONTINGENT EFFECTIVE DATE; DEMONSTRATION PROJECT.—

(1) The amendments made by this section shall become effective (if at all) in accordance with paragraph (2).

(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the "Secretary"), shall establish a demonstration project to begin on October

1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).

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SEC. 4079. [42 U.S.C. 1395mm note] DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

(1) The term "community nursing and ambulatory care" means the following services:

(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

(B) Physical, occupational, or speech therapy.

(C) Social and related services supportive of a plan of ambulatory care.

(D) Part-time or intermittent services of a home health aide.

(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act.

(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act.

(H) Certain other related services listed in section 1915(c)(4)(B) of such Act to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

(2) The term "eligible organization" means a public or private entity, organized under the laws of any State, which meets the following requirements:

(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

(C) The entity provides that all nursing care (including services of home health aids[28]) is furnished by or under the supervision of a registered nurse.

(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

(F) The entity maintains clinical records on all patients.

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[28] As in original; should be "aides".

(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act.

(c) Agreements With Eligible Organizations To Conduct Demonstration Projects.—

(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (e) with respect to members enrolled with the organization under this section.

(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act, community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

(5) Section 1876(c)(5) of the Social Security Act shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

(7) Under a demonstration project under this section—

(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act for community nursing services; and

(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

(d) Determination of Per Capita Payment Rates.—

(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act.

(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

(D) For purposes of subparagraph (C), the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act), if the services were to be furnished by other than an eligible organization.

(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

(e) Restriction on Premiums, Deductibles, Copayments, and Coinsurance.—

(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act).

(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act.

(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

(5) Section 1876(e)(4) of the Social Security Act shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.

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SEC. 4081. SUBMISSION OF CLAIMS TO SUPPLEMENTAL INSURANCE CARRIERS.

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(c) * * *

(2) [42 U.S.C. 1395ss note] (A) The amendments made by subsection (b) shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

(B) In the case of a State which the Secretary of Health and Human Services identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act, and

(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered or which has not enacted such legislation before July 1, 1988,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.

SEC. 4082. REVISION OF PART B HEARINGS.

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(d) [42 U.S.C. 1395u note] GAO STUDY.—The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.

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SEC. 4085. MISCELLANEOUS AND TECHNICAL PROVISIONS.

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(e) [42 U.S.C. 1395u note] CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS.—The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.

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(h) [42 U.S.C. 1395u note] UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS.—

(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

(2) Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).

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SEC. 4091. CONTRACT PROVISIONS.

(a) EXTENSIONS OF PEER REVIEW CONTRACT PERIOD.—

(1) [42 U.S.C. 1320c-2 note] ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES.—

(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act, the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act.

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SEC. 4094. PEER REVIEW NORMS AND EDUCATION.

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(e) [42 U.S.C. 1320c-5 note] TELECOMMUNICATIONS DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.

SEC. 4095. PREEXCLUSION HEARINGS.

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(c) [42 U.S.C. 1320c-5 note] TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

(1) for whom a notice of determination under section 1156(b) of the Social Security Act has been provided within 365 days before the date of the enactment of this Act,

(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

(d) [42 U.S.C. 1320c-5 note] REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.

(e) [None assigned.] REPORT ON IMPROVEMENTS IN PROCEDURES FOR IMPOSING SANCTIONS.—Not later than one year after the date of enactment of this Act, the Secretary of Health and Human Services shall report to Congress on the improved procedures for imposing sanctions against a practitioner or person under section 1156 of the Social Security Act established through agreement by the Health Care Financing Administration, the American Association of Retired Persons, the American Medical Association, and the Office of the Inspector General in the Department of Health and Human Services. The report shall set forth such improved procedures, describe the response of physicians and providers to the procedures, assess whether the procedures effect an appropriate balance between procedural fairness and the need for ensuring quality medical care, comment on the alternative provider-patient notification procedure contained in the agreement, and recommend whether such procedures should apply to institutional providers of health care services.

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SEC. 4102. HOME AND COMMUNITY-BASED SERVICES FOR THE ELDERLY.

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(c) [42 U.S.C. 1396n note] EXTENSION OF WAIVER.—In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act, which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.

SEC. 4103. PHYSICIANS' SERVICES FURNISHED BY DENTISTS.

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(b) [42 U.S.C. 1396d note] EFFECTIVE DATE.—

(1) The amendment made by subsection (a) applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

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SEC. 4106. [None assigned.] MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 2-MEMBER COUPLES IN CALIFORNIA.

For purposes of section 1903(f)(1)(B) of the Social Security Act, for payments made to California on or after July 1, 1983, in the case of a family consisting only of two individuals both of whom are adults and at least one of whom is aged, blind, or disabled, the "highest amount which would ordinarily be paid to a family of the same size" under the State's plan approved under part A of title IV of such Act shall, at

California's option, be the amount determined by the State agency to be the amount of the aid which would ordinarily be payable under such plan to a family which consists of one adult and two children and which is without any income or resources. Section 1902(a)(10)(C)(i)(III) of the Social Security Act shall not prevent California from establishing (under the previous sentence) an applicable income limitation for families described in that sentence which is greater than the income limitation applicable to other families, if California has an applicable income limitation under section 1903(f) of such Act which is equal to the maximum applicable income limitation permitted consistent with paragraph (1)(B) of such section for families other than those described in the previous sentence.

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SEC. 4113. HMO-RELATED PROVISIONS.

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(d) [None assigned.] CONTINUED ELIGIBILITY AND RESTRICTION ON DISENROLLMENT WITHOUT CAUSE FOR METROPOLITAN HEALTH PLAN HMO.—For purposes of sections 1902(e)(2)(A) and 1903(m)(2)(F) of the Social Security Act, the Metropolitan Health Plan HMO operated by the New York City public hospitals shall be treated in the same manner as a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act).

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SEC. 4115. [None assigned.] STATE DEMONSTRATION PROJECTS.

(a) EXTENSION OF ARIZONA HEALTH CARE DEMONSTRATION PROJECT.—

(1) Notwithstanding any limitations contained in section 1115 of the Social Security Act, but subject to paragraphs (2) and (3) of this subsection, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") upon application shall renew until September 30, 1989, approval of demonstration project number 11-P-98239/9-05 ("Arizona Health Care Cost Containment System—AHCCCS—A statewide approach to cost effective health care financing"), including all waivers granted by the Secretary under such section 1115 as of September 30, 1987.

(2) The Secretary's renewed approval of the project under paragraph (1) shall—

(A) subject to paragraph (3) be on the same terms and conditions that existed between the applicant and the Secretary as of September 30, 1987; and

(B) remain in effect through September 30, 1989, unless the Secretary finds that the applicant no longer complies with such terms and conditions.

(3) Nothing in this subsection shall be construed to prohibit or require the Secretary from granting additional waivers to the applicant—

(A) for coverage of additional optional groups, and

(B) for coverage of long-term care and other services which were not covered as of September 30, 1987.

(b) NEW YORK STATE PILOT PROGRAM FOR PRENATAL, MATERNITY, AND NEWBORN CARE.—

(1) Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this subsection referred to as the "Secretary"), the State of New York (in this subsection referred to as the "State") may conduct a demonstration project in accordance with this subsection for the purpose of testing its Prenatal/Maternity/Newborn Care Pilot Program (in this subsection referred to as the "Program"), as the Program is set forth in the Prenatal Care Act of 1987 (enacted by the State in February 1987), as an alternative to existing Federal programs.

(2) Under the demonstration project conducted under this subsection—

(A) any individual who receives benefits under the Program shall not receive any of such benefits under the plan of the State under title XIX of the Social Security Act; and

(B) the Secretary shall make payments to the State with respect to individuals receiving benefits under the Program in the same amounts as would be payable for such benefits under title XIX of the Social Security Act if such individuals were receiving such benefits under such title (as determined by the Secretary).

(3) The Secretary may (with respect to the demonstration project under this subsection) waive compliance with any requirement contained in section 1902(a)(1), 1902(a)(10)(B), 1902(a)(17)(D), 1902(a)(23), 1902(a)(30), or 1903(f) of the Social Security Act which (if applied) would prevent the State from carrying out the project, effectively achieving its purpose, or receiving payments in accordance with paragraph (2)(B).

(4) As a condition of approval of the demonstration project under this subsection, the State shall provide assurances satisfactory to the Secretary that—

(A) the State will continue to make benefits available under title XIX of the Social Security Act to all pregnant women entitled to receive benefits under such title to the extent such benefits are not provided under the Program; and

(B) the State has in effect a quality assurance mechanism to ensure the quality and accessibility of the services furnished under the Program.

(5)(A) The demonstration project under this subsection shall be conducted for a period not to exceed three years.

(B) The Secretary shall conduct an evaluation of the demonstration project under this subsection and shall report the results of such evaluation to the Congress not later than one year after completion of the project.

(c) Waivers for Family Independence Program.—Upon approval under section 9121 of this Act of the demonstration project relating to the Family Independence Program in the State of Washington and with respect to such project, the Secretary of Health and Human Services shall waive compliance with any requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of the Social Security Act, but only to the extent necessary to enable the State to carry out the project as enacted by the State of Washington in May 1987.

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Sec. 4118. TECHNICAL AND MISCELLANEOUS AMENDMENTS.

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(n) [42 U.S.C. 1396b note] Temporary Technical Error Definition.—For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act, effective for the period beginning on the date of enactment of this Act and ending December 31, 1988, a "technical error" is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.

Sec. 4119. [None assigned.] Study of Means of Recovering Costs of Nursing Facility Services From Estates of Beneficiaries.

The Secretary of Health and Human Services shall study the means of recovering amounts from estates of deceased medicaid beneficiaries (or the estates of the spouses of such deceased beneficiaries) to pay for the medical assistance for skilled nursing facility or intermediate care facility services furnished, under title XIX of the Social Security Act, to such medicaid beneficiaries. The Secretary shall report to Congress, not later than December 31, 1988, on such means, and include appropriate recommendations for changes in legislation.

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Sec. 4201. REQUIREMENTS FOR SKILLED NURSING FACILITIES.

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(c) [42 U.S.C. 1395i-3 note] Evaluation.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assessment process for residents of skilled nursing facilities under the amendments made by this section.

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Sec. 4204. [42 U.S.C. 1395i-3 note] EFFECTIVE DATES.

(a) New Requirements and Survey and Certification Process.—Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by sections 4201 and 4202 (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

(b) Enforcement.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act, the amendments made by section 4203 of this Act apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act.

(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

SEC. 4205. [42 U.S.C. 1395i-3 note] ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).

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SEC. 4211. REQUIREMENTS FOR NURSING FACILITIES.

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(b) INCORPORATING REQUIREMENTS INTO STATE PLAN.—

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(2) [42 U.S.C. 1396a note] STATE PLAN AMENDMENT REQUIRED.—A plan of a State under title XIX of the Social Security Act shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services.[27] The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).

(c) [42 U.S.C. 1396r note] EVALUATION.—The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1993, on the implementation of the resident assessment process for residents of nursing facilities under the amendments made by this section.

(d) FUNDING.—

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(2) [42 U.S.C. 1396b note] ENHANCED FUNDING FOR NURSE AIDE TRAINING.—For the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988), with respect to payment under section 1903(a)(2)(B) of the Social Security Act to a State for additional amounts expended by the State under its plan approved under title XIX of such Act for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title, any reference to "50 percent" is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act) plus 25 percentage points, but not to exceed 90 percent.

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(j) [42 U.S.C. 1396a note] TECHNICAL ASSISTANCE.—The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.

(k) [42 U.S.C. 1396r note] REPORT ON STAFFING REQUIREMENTS.—The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1993, on the progress made in implementing the nursing facility staffing requirements of subparagraph (C) of section 1919(b)(4) of the Social Security Act (as amended by subsection (a) of this section), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which have received waivers.

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[27] P.L. 101-508, §4801(e)(1)(B), added this sentence.

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SEC. 4212. SURVEY AND CERTIFICATION PROCESS.

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(c) * * *

(3) [42 U.S.C. 1396b note] For purposes of section 1903(a) of the Social Security Act, proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.

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SEC. 4214. [42 U.S.C. 1396r note] EFFECTIVE DATES.

(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by sections 4211 and 4212 (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act, without regard to whether regulations to implement such section are promulgated by such date.

(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act, the amendments made by section 4213 of this Act apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after the date of the enactment of this Act, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In applying the amendments made by this part for services furnished before October 1, 1990—

(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act, is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act.

(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.

SEC. 4215. [42 U.S.C. 1396r note] ANNUAL REPORT.

The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.[28]

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SEC. 4217. [42 U.S.C. 1396r-3 note] FINAL REGULATIONS WITH RESPECT TO PLANS OF CORRECTION OR REDUCTION.

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(b)[29] The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

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[28] P.L. 101-508, §5801(b)(5)(B), added this sentence.

[29] As in original. No heading.

Sec. 4403. [42 U.S.C. 1395b-1 note] SET ASIDE FOR RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH ISSUES.

(a) Set Asides for Issues of Health Care in Rural Areas and In Inner-city Areas.—(1) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.

(b) Agenda.—The Secretary of Health and Human Services shall establish an agenda of research and demonstration projects, relating exclusively or substantially to rural health issues or to inner-city health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such projects in the current and most recently completed fiscal years.

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Sec. 9008. [42 U.S.C. 418 note] MODIFICATION OF AGREEMENT WITH IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN.

(a) In General.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

(b) Service To Be Covered.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986))[30], any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

(A) no refund of the sums so paid has been obtained, or

(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.

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[30] As in original. One closing parenthesis should be stricken.

Sec. 9021. [None assigned.] MORATORIUM ON REDUCTIONS IN ATTORNEYS' FEES; STUDIES OF ATTORNEYS' FEE PAYMENT SYSTEM.

(a) Moratorium.—(1) The provisions of the memorandum of the Associate Commissioner of Social Security dated March 31, 1987 (relating to revised delegations of authority for administrative law judges to determine fees of representatives) which amend sections 1-220 through 1-226 of the Office of Hearings and Appeals Staff Guides and Programs Digest (commonly referred to as the OHA Handbook), and Interim Circular No. 122 (relating to the determination authority regarding fees for representation of claimants), are hereby declared to be null and void. The preceding sentence shall apply with respect to all attorneys' fees finally authorized in connection with claims for benefits under title II of the Social Security Act on and after the date of the enactment of this Act, regardless of when the legal services involved were performed; and no reconsideration of any such fee finally authorized prior to that date shall be required.

(2) Until July 1, 1989, neither the Secretary nor the Social Security Administration may modify any of the rules and regulations relating to attorneys' fees in connection with claims for benefits under title II of the Social Security Act.

(b) Studies.—(1) The Secretary of Health and Human Services shall conduct a study of the attorneys' fee payment process under title II of the Social Security Act. Such study shall—

(A) assess the levels of reimbursement to attorneys, giving consideration to the contingent nature of most arrangements between claimants and their legal representatives, and propose alternative methods for establishing fees which take the nature of these arrangements into account, and

(B) suggest changes aimed at eliminating unnecessary delays in the approval and payment of attorneys' fees and thereby streamlining the payment process.

In conducting this study, the Secretary shall consult with individuals who represent the views of attorneys and with others who represent the views of claimants.

(2) At the same time, the Comptroller General shall conduct a study of the fee approval system, including at a minimum—

(A) a study of the impact of the current system on claimants and attorneys,

(B) an identification of obstacles to the timely payment of attorneys' fees under present law, and

(C) an assessment of the effect, if any, which the reduced limit on attorneys' fees in effect immediately prior to the enactment of this Act has had on access to legal representation by applicants for disability insurance benefits.

(3) The studies required by paragraphs (1) and (2), along with any recommendations resulting therefrom, shall be submitted to the Congress no later than July 1, 1988.

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Sec. 9111. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) * * *

(2) [42 U.S.C. 1383 note] Not later than one year after the date on which the amendment made by paragraph (1) becomes effective, the Secretary of Health and Human Services shall provide every individual receiving benefits under title XVI of the Social Security Act on the basis of blindness an opportunity to make an election under section 1631(l)(1) of such Act (as added by such amendment).

(b) [42 U.S.C. 1383 note] Study.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by section 1631(l) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may be appropriate, within 12 months after the date of the enactment of this Act.

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Sec. 9116. RETENTION OF MEDICAID WHEN SSI BENEFITS ARE LOST UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

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(b) [42 U.S.C. 1383c note] Notice.—The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act as added by subsection (a) of this section) under title II of that Act. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX.

(c) [42 U.S.C. 1383c note] STATE DETERMINATIONS.—Any determination required under section 1634(d) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act (or State supplementary payments) in the absence of benefits under section 202 shall be made by the appropriate State agency.

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(e) [42 U.S.C. 1383c note] EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act (as described in section 1634(d)(2) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before July 1, 1988.

SEC. 9117. [42 U.S.C. 1383 note] DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

(8) such other procedures and services as the Secretary may approve.

(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

(B) The Team shall have designated members responsible for—

(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act;

(ii) ensuring that such individuals understand their rights under the programs;

(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

(A) the sum of $1,250,000 for the fiscal year 1988;

(B) the sum of $2,500,000 for the fiscal year 1989; and

(C) such sums as may be necessary for each fiscal year thereafter.

SEC. 9118. [None assigned.] ASSISTANCE TO HOMELESS AFDC FAMILIES.

The Secretary of Health and Human Services may not take any action, prior to September 30, 1989, that would have the effect of implementing in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children, or that would change current policy with respect to any of the matters addressed in such proposed regulation.

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SEC. 9121. [42 U.S.C. 602 note] DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) IN GENERAL.—Upon application of the State of Washington and approval by the Secretary of Health and Human Services, the State of Washington (in this section referred to as the "State") may conduct a demonstration project in accordance with this section for the purpose of testing whether the operation of its Family Independence Program enacted in May 1987 (in this section referred to as the "Program"), as an alternative to the AFDC program under title IV of the Social Security Act, would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning.

(b) NATURE OF PROJECT.—Under the demonstration project conducted under this section—

(1) every individual eligible for aid under the State plan approved under section 402(a) of the Social Security Act shall be eligible to enroll in the Program, which shall operate simultaneously with the AFDC program so long as there are individuals who qualify for the latter;

(2) cash assistance shall be furnished in a timely manner to all eligible individuals under the Program (and the State may not make expenditures for services under the Program until it has paid all necessary cash assistance), with

no family receiving less in cash benefits than it would have received under the AFDC program;

(3) individuals may be required to register, undergo assessment, and participate in work, education, or training under the Program, except that—

(A) work or training may not be required in the case of—

(i) a single parent of a child under six months of age, or more than one parent of such a child in a two-parent family,

(ii) a single parent with a child of any age who has received assistance for less than six months,

(iii) a single parent with a child under three years of age who has received assistance for less than three years,

(iv) an individual under 16 years of age or over 64 years of age,

(v) an individual who is incapacitated, temporarily ill, or needed at home to care for an impaired person, or

(vi) an individual who has not yet been individually notified in writing of such requirement or of the expiration of his or her exempt status under this subparagraph;

(B) participation in work or training shall in any case be voluntary during the first two-years of the Program, and may thereafter be made mandatory only in counties where more than 50 percent of the enrollees can be placed in employment within three months after they are job ready;

(C) in no case shall the work and training aspect of the Program be mandated in any county where the unemployment level is at least twice the State average; and

(D) mandated work shall not include work in any position created by a reduction in the work force, a bona fide labor dispute, the decertification of a bargaining unit, or a new job classification which subverts the intention of the Program;

(4) there shall be no change in existing State law which would eliminate guaranteed benefits or reduce the rights of applicants or enrollees; and

(5) the Program shall include due process guarantees and procedures no less than those which are available to participants in the AFDC program under Federal law and regulation and under State law.

(c) WAIVERS.—The Secretary shall (with respect to the project under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the project or effectively achieving its purpose, or with the requirements of sections 1902(a)(1), 1902(e)(1), and 1916 of that Act (but only to the extent necessary to enable the State to carry out the Program as enacted by the State in April 1987).

(d) FUNDING.—

(1) The Secretary, under section 403(b) or 1903(d) of the Social Security Act, shall reimburse the State for its expenditures under the Program—

(A) at a rate equal to the Federal matching rate applicable to the State under section 403(a)(1) (or 1118) of the Social Security Act, for cash assistance, medical assistance, and child care provided to enrollees;

(B) at a rate equal to the applicable Federal matching rate under section 403(a)(3) of such Act, for administrative expenses; and

(C) at the rate of 75 percent for an evaluation plan approved by the Secretary.

(2) As a condition of approval of the project under this section, the State must provide assurances satisfactory to the Secretary that the total amount of Federal reimbursement over the period of the project will not exceed the anticipated Federal reimbursements (over that period) under the AFDC and Medicaid programs; but this paragraph shall not prevent the State from claiming reimbursement for additional persons who would qualify for assistance under the AFDC program, for costs attributable to increases in the State's payment standard, or for any other federally-matched benefits or services.

(e) EVALUATION.—The State must satisfy the Secretary that the Program will be evaluated using a reasonable methodology.

(f) DURATION OF PROJECT.—

(1) The project under this section shall begin on the date on which the first individual is enrolled in the Program and (subject to paragraph (2)) shall end five years after that date.

(2) The project may be terminated at any time, on six months written notice, by the State or (upon a finding that the State has materially failed to comply with this section) by the Secretary.

SEC. 9122. [42 U.S.C. 602 note] CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE.

(a) In General.—Upon application by the State of New York and approval by the Secretary of Health and Human Services (in this section referred to as the "Secretary"), the State of New York (in this section referred to as the "State") may conduct a demonstration program in accordance with this section for the purpose of testing a State program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act.

(b) Nature of Program.—Under the demonstration program conducted under this section—

(1) all custodial parents of dependent children who are eligible for supplements under the State plan approved under section 402(a) of the Social Security Act (and such other types or classes of such parents as the State may specify) may elect to receive benefits under the State's Child Support Supplement Program in lieu of supplements under such plan; and

(2) the Federal Government will pay to the State with respect to families receiving benefits under the State's Child Support Supplement Program the same amounts as would have been payable with respect to such families under sections 403 and 1903 of the Social Security Act as if the families were receiving aid and medical assistance under the State plans in effect with respect to such sections.

(c) Waivers.—The Secretary shall (with respect to the program under this section) waive compliance with any requirements contained in title IV of the Social Security Act which (if applied) would prevent the State from carrying out the program or effectively achieving its purpose.

(d) Conditions of Approval.—As a condition of approval of the program under this section, the State shall—

(1) provide assurances satisfactory to the Secretary that the State—

(A) will continue to make assistance available to all eligible children in the State who are in need of financial support, and

(B) will continue to operate an effective child support enforcement program;

(2) agree—

(A) to have the program evaluated, and

(B) to report interim findings to the Secretary at such times as the Secretary shall provide; and

(3) satisfy the Secretary that the program will be evaluated using a reasonable methodology that can determine whether changes in work behavior and changes in earnings are attributable to participation in the program.

(e) Application Process.—In order to participate in the program under this section, the State must submit an application under this section not later than two years after the date of enactment of this Act. The Secretary shall approve or disapprove the application of the State not later than 90 days after the date of its submission. If the application is disapproved, the Secretary shall provide to the State a statement of the reasons for such disapproval, of the changes needed to obtain approval, and of the date by which the State may resubmit the application.

(f) Effective Date.—The program under this section shall commence not later than the first day of the third calendar quarter beginning on or after the date on which the application of the State is approved in accordance with subsection (e).

(g) Duration of Program.—

(1) Except as provided in paragraph (2), if the Secretary approves the application of the State, the demonstration program under this section shall be conducted for a period not to exceed five years.

(2)(A) The Governor of the State may before the end of the period described in paragraph (1) terminate the demonstration program under this section if the Governor finds that the program is not successful in testing the State's Child Support Supplement Program as an alternative to the program under title IV of the Social Security Act. The Governor shall notify the Secretary of the decision to terminate the program not less than three months prior to the date of such termination.

(B) The Secretary may terminate the program before the end of such period if the Secretary finds that the program is not in compliance with the terms of the application. The Secretary shall notify the Governor of the decision to terminate the program not less than three months prior to the date of such termination.

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Sec. 9134. INCREASED FUNDING FOR SOCIAL SERVICES BLOCK GRANTS.

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(b) [42 U.S.C.1397b note] Requirement That Additional Funds Supplement and Not Supplant Funds Available From Other Sources.—The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) shall—

(A) be used only for the purpose of providing additional services under title XX of the Social Security Act; and

(B) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.

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SEC. 9138. [None assigned.] STUDY OF INFANTS AND CHILDREN WITH AIDS IN FOSTER CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct (or arrange for) a survey to determine—

(1) the total number of infants and children in the United States who have been diagnosed as having acquired immune deficiency syndrome and who have been placed in foster care;

(2) the problems encountered by social service agencies in placing infants and children with such syndrome in foster care; and

(3) the potential increase (over the five-year period beginning on the date of the enactment of this Act) in the number of infants and children with such syndrome who will require foster care.

For purposes of this section, an infant or child with acquired immune deficiency syndrome includes an infant or child who is infected with the virus associated with such syndrome.

(b) RESTRICTION ON SCOPE OF SURVEY.—In conducting (or arranging for) the survey under subsection (a), the Secretary shall assure that survey activities do not duplicate research activities conducted by the Centers for Disease Control.

(c) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary shall report to the Congress on the results of the survey conducted under subsection (a) and shall make recommendations to the Congress with respect to improving the care of infants and children with acquired immune deficiency syndrome who lack ongoing parental involvement and support.

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SEC. 9151. [26 U.S.C. 3304 note] DETERMINATION OF AMOUNT OF FEDERAL SHARE WITH RESPECT TO CERTAIN EXTENDED BENEFITS PAYMENTS.

For the purpose of determining the amount of the Federal payment to any State under section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 with respect to the implementation of paragraph (3) of section 202(a) of such Act (as added by section 1024(a) of the Omnibus Reconciliation Act of 1980), such paragraph shall be considered to apply only with respect to weeks of unemployment beginning after October 31, 1981, except that for any State in which the State legislature did not meet in 1981, it shall be considered to apply for such purpose only with respect to weeks of unemployment beginning after October 31, 1982.

SEC. 9152. [26 U.S.C. 3304 note] DEMONSTRATION PROGRAM TO PROVIDE SELF-EMPLOYMENT ALLOWANCES FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Labor (hereinafter in this section referred to as the "Secretary") shall carry out a demonstration program under this section for the purpose of making available self-employment allowances to eligible individuals. To carry out such program, the Secretary shall enter into agreements with three States that—

(1) apply to participate in such program, and

(2) demonstrate to the Secretary that they are capable of implementing the provisions of the agreement.

(b) SELECTION OF STATES.—(1) In determining whether to enter into an agreement with a State under this section, the Secretary shall take into consideration at least—

(A) the availability and quality of technical assistance currently provided by agencies of the State to the self-employed;

(B) existing local market conditions and the business climate for new, small business enterprises in the State;

(C) the adequacy of State resources to carry out a regular unemployment compensation program and a program under this section;

(D) the range and extent of specialized services to be provided by the State to individuals covered by such an agreement;

(E) the design of the evaluation to be applied by the State to the program; and

(F) the standards which are to be utilized by the State for the purpose of assuring that individuals who will receive self-employment assistance under this section will have sufficient experience (or training) and ability to be self employed[31].

(2) The Secretary may not enter into an agreement with any State under this section unless the Secretary makes a determination that the State's unemployment compensation program has adequate reserves.

(c) PROVISIONS OF AGREEMENTS.—Any agreement entered into with a State under this section shall provide that—

(1) each individual who is an eligible individual with respect to any benefit year beginning during the three-year period commencing on the date on which such agreement is entered into shall receive a self-employment allowance;

(2) self-employment allowances made to any individual under this section shall be made in the same amount, on the same terms, and subject to the same conditions as regular or extended unemployment compensation, as the case may be, paid by such State; except that—

(A) State and Federal requirements relating to availability for work, active search for work, or refusal to accept suitable work shall not apply to such individual; and

(B) such individual shall be considered to be unemployed for purposes of the State and Federal laws applicable to unemployment compensation, as long as the individual meets the requirements applicable under this section to such individual;

(3) to the extent that such allowances are made to an individual under this section, an amount equal to the amount of such allowances shall be charged against the amount that may be paid to such individual under State law for regular or extended unemployment compensation, as the case may be;

(4) the total amount paid to an individual with respect to any benefit year under this section may not exceed the total amount that could be paid to such individual for regular or extended unemployment compensation, as the case may be, with respect to such benefit year under State law;

(5) the State shall implement a program that—

(A) is approved by the Secretary;

(B) will not result in any cost to the Unemployment Trust Fund established by section 904(a) of the Social Security Act in excess of the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section;

(C) is designed to select and assist individuals for self-employment allowances, monitor the individual's self-employment, and provide, as described in subsection (d), to the Secretary a complete evaluation of the use of such allowances; and

(D) otherwise meets the requirements of this section; and

(6) the State, from its general revenue funds, shall—

(A) repay to the Unemployment Trust Fund any cost incurred by the State and charged to the Fund which exceeds the cost which would have been incurred by such State and charged to such Fund if the State had not participated in the demonstration program under this section; and

(B) in any case in which any excess cost described in subparagraph (A) is not repaid in the fiscal year in which it was charged to the Fund, pay to the Fund an amount of interest, on the outstanding balance of such excess cost, which is sufficient (when combined with any repayment by the State described in subparagraph (A)) to reimburse the Fund for any loss which would not have been incurred if such excess cost had not been incurred.

(d) EVALUATION.—(1) Each State that enters into an agreement under this section shall carry out an evaluation of its activities under this section. Such evaluation shall be based on an experimental design with random assignment between a treatment group and a control group with not more than one-half of the individuals receiving assistance at any one time being assigned to the treatment group.

(2) The Secretary shall use the data provided from such evaluation to analyze the benefits and the costs of the program carried out under this section, to formulate the reports under subsection (g), and to estimate any excess costs described in subsection (c)(6)(A).

(e) FINANCING.—(1) Notwithstanding section 303(a)(5) of the Social Security Act and section 3304(a)(4) of the Internal Revenue Code of 1986, amounts in the unemployment fund of a State may be used by a State to make payments (exclusive of expenses of administration) for self-employment allowances made under this section to an individual who is receiving them in lieu of regular unemployment compensation.

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[31] As in original. Possibly should be "self-employed".

(2) In any case in which a self-employment allowance is made under this section to an individual in lieu of extended unemployment compensation under the Federal-State Extended Unemployment Compensation Act of 1970, payments made under this section for self-employment allowances shall be considered to be compensation described in section 204(a)(1) of such Act and paid under State law.

(f) LIMITATION.—No funds made available to a State under title III of the Social Security Act or any other Federal law may be used for the purpose of administering the program carried out by such State under this section.

(g) REPORT TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on the effectiveness of the demonstration program carried out under this section. Such report shall include—

(A) information on the extent to which this section has been utilized;

(B) an analysis of any barriers to such utilization; and

(C) an analysis of the feasibility of extending the provisions of this section to individuals not covered by State unemployment compensation laws.

(2) Not later than six years after the date of the enactment of this Act, the Secretary shall submit a final report to the Congress on such program.

(h) FRAUD AND OVERPAYMENTS.—(1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received payment under this section to which he was not entitled, such individual shall be—

(A) ineligible for further assistance under this section; and

(B) subject to prosecution under section 1001 of title 18, United States Code.

(2)(A) If any person received any payment under this section to which such person was not entitled, the State is authorized to require such person to repay such assistance; except that the State agency may waive such repayment if it determines that—

(i) the providing of such assistance or making of such payment was without fault on the part of such person; and

(ii) such repayment would be contrary to equity and good conscience.

(B) No repayment shall be required under subparagraph (A) until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the person, and the determination has become final. Any determination under such subparagraph shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(i) DEFINITIONS.—For purposes of this section—

(1) the term "eligible individual" means, with respect to any benefit year, an individual who—

(A) is eligible to receive regular or extended compensation under the State law during such benefit year;

(B) is likely to receive unemployment compensation for the maximum number of weeks that such compensation is made available under the State law during such benefit year;

(C) submits an application to the State agency for a self-employment allowance under this section; and

(D) meets applicable State requirements,

except that not more than (i) 3 percent of the number of individuals eligible to receive regular compensation in a State at the beginning of a fiscal year, or (ii) the number of persons who exhausted their unemployment compensation benefits in the fiscal year ending before such fiscal year, whichever is lesser, may be considered as eligible individuals for such State for purposes of this section during such fiscal year;

(2) the term "self-employment allowance" means compensation paid under this section for the purpose of assisting an eligible individual with such individual's self-employment; and

(3) the terms "compensation", "extended compensation", "regular compensation", "benefit year", "State", and "State law", have the respective meanings given to such terms by section 205 of the Federal-State Extended Unemployment Compensation Act of 1970.

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SEC. 9401. [None assigned.] RESTORATION OF TRUST FUNDS FOR 1987.

(a) IN GENERAL.—

(1) OBLIGATIONS ISSUED.—Except as provided in subsection (b), within 30 days after the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall issue to each Federal fund obligations under chapter 31 of title 31, United States Code, which bear such issue dates, interest rates, and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of such Federal fund will replicate to the maximum extent practicable the obligations that would have been held by such Federal fund if any—

(A) failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of section 3101(b) of title 31, United States Code, had not occurred, and

(B) issuance of such obligations had occurred immediately on the expiration of the debt issuance suspension period.

(2) INTEREST CREDITED.—On the first normal interest payment date or within 30 days after the expiration of any debt issuance suspension period (whichever is later) to which this section applies, the Secretary of the Treasury shall credit to each Federal fund an amount determined by the Secretary, after taking into account the actions taken pursuant to paragraph (1), to be equal to the income lost by such Federal fund by reason of any failure to invest amounts in such Federal fund (or any disinvestment) resulting from the limitation of such section 3101(b), including any income lost between the expiration of the debt issuance suspension period and the date of the credit.

(b) INTEREST ON MARKET-BASED OBLIGATIONS.—With respect to any Federal fund which invests in market-based special obligations, on the expiration of a debt issuance suspension period to which this section applies, the Secretary of the Treasury shall immediately credit to such fund an amount equal to the interest that would have been earned by such fund during the debt issuance suspension period if the daily balance in such fund that the Secretary was unable to invest by reason of the limitation of such section 3101(b) had been invested each day during such period, overnight, in obligations under chapter 31 of title 31, United States Code, earning interest at a rate determined by the Secretary in accordance with the standard practice of the Department of the Treasury.

(c) INTEREST ON STATE AND LOCAL GOVERNMENT SERIES.—On the expiration of any debt issuance suspension period to which this section applies, the Secretary of the Treasury shall (as of the close of such period) credit to each holder of any obligation which is part of the State and Local Government Series and which is in the nature of a demand deposit an amount equal to the income lost by such holder by reason of not being able to reinvest the principal of, and interest on, such obligation during such period.

(d) DEBT ISSUANCE SUSPENSION PERIODS TO WHICH SECTION APPLIES.—This section shall apply to debt issuance suspension periods beginning on or after July 18, 1987, and ending before January 1, 1988.

(e) CREDITED AMOUNTS TREATED AS INTEREST.—All amounts credited under this section shall be treated as interest on obligations issued under chapter 31 of title 31, United States Code, for all purposes of Federal law.

(f) DEFINITIONS.—For purposes of this section—

(1) DEBT ISSUANCE SUSPENSION PERIOD.—The term "debt issuance suspension period" means any period for which the Secretary of the Treasury determines that the issuance of obligations of the United States sufficient to conduct the orderly financial operations of the United States may not be made without exceeding the limitation imposed by section 3101(b) of title 31, United States Code.

(2) FEDERAL FUND.—The term "Federal fund" means any Federal trust fund or Government account established pursuant to Federal law to which the Secretary of the Treasury has issued or is expressly authorized by law directly to issue obligations under chapter 31 of title 31, United States Code, in respect of public money, money otherwise required to be deposited in the Treasury, or amounts appropriated; except that such term shall not include the Civil Service Retirement and Disability Fund or the Thrift Savings Fund of the Federal Employees' Retirement System.

(g) SPECIAL RULES.—In the case of any debt suspension period beginning on or after July 18, 1987, and ending before the date of the enactment of this Act—

(1) for purposes of determining the date on which the Secretary of the Treasury is required to take the actions described in subsections (a), (b), and (c), such period shall be treated as having ended on such date of enactment, and

(2) the amount required to be credited under subsection (c) shall include any income lost because the credit was not made upon the expiration of such period.

SEC. 9402. 6-MONTH EXTENSION OF PROVISIONS RELATING TO COLLECTION OF NON-TAX DEBTS OWED TO FEDERAL AGENCIES.

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(b) [26 U.S.C. 6402 note] CLARIFICATION OF CONGRESSIONAL INTENT AS TO SCOPE OF PROVISION.—

(1) Nothing in the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall be construed as exempting debts of corporations or any other category of persons from the application of such amendments.

(2) It is the intent of the Congress that, to the extent practicable, the amendments made by section 2653 of the Deficit Reduction Act of 1984 shall extend to all Federal agencies (as defined in the amendments made by such section).

(3) The Secretary of the Treasury shall issue regulations to carry out the purposes of this subsection.

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[*Internal References.*—S.S. Act §§711(b), 1814(l), 1843(b),1861(s), and 1886(d) cite the Omnibus Budget Reconciliation Act of 1987 and S.S. Act titles II, IV, IX, XI part B, XVI (SSI), XVIII and part A and part B, XIX, and XX, and §§218, 1115, 1154, 1156, 1816, 1819, 1842, 1861(j), 1876, 1881, 1883, 1886, 1902, 1910, 1913, 1919 and 1922 catchlines and §§201(d); 464(a); 904(b); 1128B(c) and (d); 1137(a); 1156(b); 1631(l); 1814(b); 1817(c); 1819(g) and (h); 1833(h) and (m); 1834(a) and (b); 1842(b), (i), and (j); 1861(s) and (v); 1862(a); 1864(a) and (d); 1865(a); 1866(c); 1869(b); 1875(b); 1886(d); 1888(d); 1902(a), (e), and (i); 1903(a), (f), (h), (i), (m), and (u); 1905(a), (c), (d), (f), and (i); 1910(a); 1911(a) and (b); 1913(a) and (b); 1915(a) and (c); 1916(a) and (b); 1917(a); 1919(c), (e), (f), (g), and (h); 1922(a) and (e) and 1927 have footnotes referring to P.L. 100-203. P.L. 90-248, §402 catchline has a footnote referring to P.L. 100-203.]

P.L. 100-204, Approved December 22, 1987 (101 Stat. 1331)
Foreign Relations Authorization Act, Fiscal Years 1988 and 1989

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SEC. 724. [22 U.S.C. 287 note] **POWERS OF THE COMMISSION.**

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(d) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this part. Upon request of the Chairman of the Commission, the head of any such Federal agency shall furnish such information to the Commission, to the extent authorized by law; except that the head of any Federal agency to which a request for information is provided pursuant to this subsection may deny access to such information, or make access subject to such terms and conditions as the head of that agency may prescribe, on the basis that the information in question is classified and the Commission does not have adequate procedures to safeguard the information in question, or that the Commission does not have a need to know the classified information. In addition, a Federal agency may not provide the Commission with information that could disclose intelligence sources or methods without first securing the approval of the Director of Central Intelligence. The head of any such Federal agency may provide information on a reimbursable basis.

SEC. 725. [22 U.S.C. 287 note] **STAFF.**

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(b) DETAILING OF GOVERNMENT PERSONNEL.—Upon request of the Commission, the head of any Federal agency may detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist it in carrying out this part.

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[*Internal References.*—S.S. Act titles II, IV, XI, XVI (SSI), XVIII, and XIX catchlines have footnotes referring to P.L. 100-204.]

P.L. 100-235, Approved January 8, 1988 (101 Stat. 1724)
Computer Security Act of 1987

* * *

SEC. 5. [40 U.S.C. 759 note] FEDERAL COMPUTER SYSTEM SECURITY TRAINING.

(a) IN GENERAL.—Each Federal agency shall provide for the mandatory periodic training in computer security awareness and accepted computer security practice of all employees who are involved with the management, use, or operation of each Federal computer system within or under the supervision of that agency. Such training shall be—

(1) provided in accordance with the guidelines developed pursuant to section 20(a)(5) of the National Bureau of Standards Act[1] (as added by section 3 of this Act), and in accordance with the regulations issued under subsection (c) of this section for Federal civilian employees; or

(2) provided by an alternative training program approved by the head of that agency on the basis of a determination that the alternative training program is at least as effective in accomplishing the objectives of such guidelines and regulations.

(b) TRAINING OBJECTIVES.—Training under this section shall be started within 60 days after the issuance of the regulations described in subsection (c). Such training shall be designed—

(1) to enhance employees' awareness of the threats to and vulnerability of computer systems; and

(2) to encourage the use of improved computer security practices.

(c) REGULATIONS.—Within six months after the date of the enactment of this Act, the Director of the Office of Personnel Management shall issue regulations prescribing the procedures and scope of the training to be provided Federal civilian employees under subsection (a) and the manner in which such training is to be carried out.

SEC. 6. [40 U.S.C. 759 note] ADDITIONAL RESPONSIBILITIES FOR COMPUTER SYSTEMS SECURITY AND PRIVACY.

(a) IDENTIFICATION OF SYSTEMS THAT CONTAIN SENSITIVE INFORMATION.—Within 6 months after the date of enactment of this Act, each Federal agency shall identify each Federal computer system, and system under development, which is within or under the supervision of that agency and which contains sensitive information.

(b) SECURITY PLAN.—Within one year after the date of enactment of this Act, each such agency shall, consistent with the standards, guidelines, policies, and regulations prescribed pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949, establish a plan for the security and privacy of each Federal computer system identified by that agency pursuant to subsection (a) that is commensurate with the risk and magnitude of the harm resulting from the loss, misuse, or unauthorized access to or modification of the information contained in such system. Copies of each such plan shall be transmitted to the National Bureau of Standards[2] and the National Security Agency for advice and comment. A summary of such plan shall be included in the agency's five-year plan required by section 3505 of title 44, United States Code. Such plan shall be subject to disapproval by the Director of the Office of Management and Budget. Such plan shall be revised annually as necessary.

SEC. 7. [40 U.S.C. 759 note] DEFINITIONS.

As used in this Act, the terms "computer system", "Federal computer system", "operator of a Federal computer system", "sensitive information", and "Federal agency" have the meanings given in section 20(d) of the National Bureau of Standards Act (as added by section 3 of this Act).

SEC. 8. [40 U.S.C. 759 note] RULES OF CONSTRUCTION OF ACT.

Nothing in this Act, or in any amendment made by this Act, shall be construed—

(1) to constitute authority to withhold information sought pursuant to section 552 of title 5, United States Code; or

(2) to authorize any Federal agency to limit, restrict, regulate, or control the collection, maintenance, disclosure, use, transfer, or sale of any information (regardless of the medium in which the information may be maintained) that is—

(A) privately-owned information;

(B) disclosable under section 552 of title 5, United States Code, or other law requiring or authorizing the public disclosure of information; or

(C) public domain information.

[*Internal References.*—S.S. Act titles II, IV, XI, XVI (SSI), XVIII, and XIX catchlines have footnotes referring to P.L. 100-235.]

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[1] P.L. 100-418, §5115(a)(2), renamed this Act the "National Institute of Standards and Technology Act".

[2] P.L. 100-418, §5115(c), deems this reference to refer to the National Institute of Standards and Technology.

P.L. 100-237, Approved January 8, 1988 (101 Stat. 1733)

Commodity Distribution Reform Act and WIC Amendments of 1987

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Sec. 10. **[42 U.S.C. 1786 note] STUDY OF MEDICAID SAVINGS FOR NEWBORNS FROM WIC PROGRAM.**

(a) Study.—The Secretary of Agriculture in consultation with the Secretary of Health and Human Services shall conduct a national study of savings in the amount of assistance provided to families with newborns under State plans for medical assistance approved under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and State indigent health care programs, during the first 60-day period after birth, as the result of the participation of mothers of newborns before birth in the special supplemental food program authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

(b) Report.—Not later than February 1, 1990, the Secretary shall submit to Congress a report that describes the results of the study conducted under subsection (a).

(c) Funding.—This section shall be carried out using funds made available under section 17(g)(3) of the Child Nutrition Act of 1966.

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[*Internal Reference.*—S.S. Act title XIX catchline has a footnote referring to P.L. 100-237.]

P.L. 100-300, Approved April 29, 1988 (102 Stat. 437)

International Child Abduction Remedies Act

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Sec. 3. [42 U.S.C. 11602] **DEFINITIONS.**

For the purposes of this Act—

(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;

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Sec. 7. [42 U.S.C. 11606] **UNITED STATES CENTRAL AUTHORITY.**

(a) Designation.—The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

(b) Functions.—The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this Act.

(c) Regulatory Authority.—The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this Act.

(d) Obtaining Information From Parent Locator Service.—The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.[4]

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[*Internal Reference.*—S.S. Act §463(e) cites the International Child Abduction Remedies Act.]

P.L. 100-360, Approved July 1, 1988 [102 Stat. 683]

Medicare Catastrophic Coverage Act of 1988

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Sec. 104. Effective dates, transition, and conforming amendments.

(a) [42 U.S.C. 1395d note] Effective Date.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), the amendments made by this subtitle shall take effect on January 1, 1989, and shall apply—

(A) to the inpatient hospital deductible for 1989 and succeeding years,

(B) to care and services furnished on or after January 1, 1989,

(C) to premiums for January 1989 and succeeding months, and

(D) to blood or blood cells furnished on or after January 1, 1989.

(2) ELIMINATION OF POST-HOSPITAL REQUIREMENT FOR EXTENDED CARE SERVICES.—The amendments made by this subtitle, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act) that extended care services are only covered under title XVIII of such Act if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989.

(b) [42 U.S.C. 1395e note] HOLD HARMLESS PROVISIONS.—In the case of an individual for whom a spell of illness (as defined in section 1861(a) of the Social Security Act, as in effect on December 31, 1988) began before January 1, 1989, and had not yet ended as of such date—

(1)(A) section 1813(a)(1) of such Act (as amended by this subtitle) shall not apply to services furnished during that spell of illness during 1989[1], and

(B) if that individual begins a period of hospitalization (as defined in such section) during 1989[2] after the end of that spell of illness, the first period of hospitalization during 1989[3] that begins after that spell of illness shall be considered to be (for purposes of such section) the first period of hospitalization that begins during that year; and

(2) the amount of any deductible under section 1813(a)(2) of such Act (as amended by this subtitle) shall be reduced during that spell of illness during 1989[4] to the extent the deductible under such section was applied during the spell of illness.

(c) [42 U.S.C. 1395ww note] ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act, outlier cutoff points under section 1886(d)(5)(A) of such Act, and weighting factors under section 1886(d)(4) of such Act for discharges occurring on or after October 1, 1988, and before January 1, 1990,[5] the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101).

(2) PPS-EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act for portions of cost reporting periods occurring on or after January 1, 1989, and before January 1, 1990,[6] the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act, without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989[7].

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SEC. 113. [None assigned.] STUDY OF TAX INCENTIVES FOR PURCHASE OF COVERAGE FOR LONG-TERM CARE.

(a) IN GENERAL.—The Secretary of the Treasury (in this section referred to as the "Secretary") shall conduct a study of Federal tax policies to promote the private financing of long-term care (as defined in subsection (d)). The study shall identify alternative methods of creating incentives, through the tax system, to encourage individuals to purchase insurance coverage for long-term care. The study shall also consider the cost to the United States Treasury and the potential benefits to consumers, including whether the incentives would benefit all or most of the population requiring protection.

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[1] P.L. 101-234, §101(b)(3), struck out "or 1990".
[2] P.L. 101-234, §101(b)(3), struck out "or 1990".
[3] P.L. 101-234, §101(b)(3), struck out "or 1990".
[4] P.L. 101-234, §101(b)(3), struck out "or 1990".
[5] P.L. 101-234, §101(c)(1), inserted "and before January 1, 1990,".
[6] P.L. 101-234, §101(c)(2)(A)(i), inserted "and before January 1, 1990,".
[7] P.L. 101-234, §101(c)(2)(A)(ii), inserted ", without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989".

(b) Consultation.—The Secretary shall conduct the study required by subsection (a) in consultation with representatives of the insurance industry, providers of long-term care, and consumers.

(c) Report.—The Secretary shall report the results of the study required by subsection (a) to the Congress not later than May 31, 1990[8], together with the Secretary's recommendations for any changes in Federal law that the Secretary determines to be appropriate to promote the private financing of long-term care.

(d) Long-term Care Defined.—For purposes of this section, the term "long-term care" includes care and services provided by nursing homes, home health agencies, and other mechanisms for the delivery of long-term care services.

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Sec. 222. [42 U.S.C. 1395mm note] Adjustment of contracts with prepaid health plans.

The Secretary of Health and Human Services shall—

(1) modify contracts under section 1876 of the Social Security Act, for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act; and

(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(i)(2)(A) of the Social Security Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967[9], or under section 222(a) of the Social Security Amendments of 1972[10], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.

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Sec. 301. Requiring Medicaid Buy-in of Premiums and Cost-sharing for Indigent Medicare Beneficiaries.

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(g) [42 U.S.C. 1396a note] Treatment of Certain States.—

(1) States Operating Under Demonstration Projects.—In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act, the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(10)(E) of the Social Security Act in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act.

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(h) [42 U.S.C. 1396a note] Effective Date.—(1) The amendments made by this section apply (except as provided in subsections (e) and (f) and under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

(A) monthly premiums under title XVIII of such Act for months beginning with January 1989, and

(B) items and services furnished on and after January 1, 1989.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative

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[8] P.L. 101-234, §102(b), struck out "November 30, 1988" and substituted "May 31, 1990".

[9] P.L. 90-248.

[10] P.L. 92-603.

session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 302. COVERAGE AND PAYMENT FOR PREGNANT WOMEN AND INFANTS WITH INCOMES BELOW POVERTY LINE.

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(f) [42 U.S.C. 1396a note] EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section apply (except as provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) shall take effect on the date of the enactment of this Act.

(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a regular legislative session of 2 years, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 303. PROTECTION OF INCOME AND RESOURCES OF COUPLE FOR MAINTENANCE OF COMMUNITY SPOUSE.

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(f) [None assigned.] TREATMENT OF HOMESTEAD EXEMPTION IN MISSOURI.—The State medical assistance plan of Missouri shall not be in compliance with the requirements of title XIX of the Social Security Act as of October 1, 1989, unless such plan is amended to provide that, in determining the resources of any aged, blind, or disabled individual in the State who applies for medical assistance under such plan on or after such date, the State will not consider the home of the individual as a resource, regardless of the value of the home.

(g) [42 U.S.C. 1396r-5 note] EFFECTIVE DATE.—

(1)(A) The amendments made by this section apply (except as provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after September 30, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) Section 1924 of the Social Security Act (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date.

(2)(A) The amendment made by subsection (b) and section 1902(a)(51)(B) of the Social Security Act, apply (except as provided in paragraph (5)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1988, or the date of the enactment of this Act, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) Section 1917(c) of the Social Security Act, as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989.

(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989.

(3) The amendments made by subsection (c) shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(4) The amendment made by subsection (d) is effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3586) is superseded to the extent inconsistent with the amendment made by subsection (d).

(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of subsection (e)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(6) The amendments made by paragraphs (1) and (5) of subsection (e) shall apply to medical assistance furnished on or after October 1, 1982.

SEC. 401. [42 U.S.C. 1395b note] ESTABLISHMENT.

There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in this title referred to as the "Commission") and also to be known as the "Claude Pepper Commission" or the "Pepper Commission"[11].

SEC. 402. [42 U.S.C. 1395b note] DUTIES.

(a) IN GENERAL.—The Commission shall—

(1) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

(2) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

(A) comprehensive long-term care services for the elderly and disabled,

(B) comprehensive health care services for the elderly and disabled, and

(C) comprehensive health care services for all individuals in the United States.

(b) CONSIDERATIONS IN RECOMMENDATIONS.—In making its recommendations, the Commission shall consider—

(1) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

(2) the most efficient and effective manner of administering such programs.

(c) DEFINITIONS.—In this title:

(1) The term "comprehensive health care services" includes—

(A) inpatient hospital services (including mental health services);

(B) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

(C) physician services and other outpatient health care services (including mental health services);

(D) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

(E) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

(2) The term "comprehensive long-term care services" includes custodial and noncustodial services in facilities, as well as home and community-based services.

SEC. 403. [42 U.S.C. 1395b note] MEMBERSHIP.

(a) APPOINTMENT.—The Commission shall be composed of 15 members appointed as follows:

(1) The President shall appoint 3 members.

(2) The President pro tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate, of whom not more than 4 may be of the same political party.

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[11] P.L. 101-239, §6220(a), inserted "and also to be known as the "Claude Pepper Commission" or the "Pepper Commission".

(3) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

(b) Chairman and Vice Chairmen[12].—The Commission shall elect a chairman and 4 vice chairmen[13] from among its members.

(c) Vacancies.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

(d) Quorum.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under section 405(a).

(e) Meetings.—The Commission shall meet at the call of its chairman or a majority of its members.

(f) Compensation and Reimbursement of Expenses.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

Sec. 404. [42 U.S.C. 1395b note] Staff and Consultants.

(a) Staff.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(b) Consultants.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

Sec. 405. [42 U.S.C. 1395b note] Powers.

(a) Hearings and Other Activities.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

(b) Studies by General Accounting Office.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

(c) Cost Estimates by Congressional Budget Office.—

(1) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

(2) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under paragraph (1).

(d) Detail of Federal Employees.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(e) Technical Assistance.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

(f) Use of Mails.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies, and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code[14].

(g) Obtaining Information.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(h) Administrative Support Services.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(i) Acceptance of Donations.—The Commission may accept, use, and dispose of gifts or donations of services or property.

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[12] P.L. 101-239, §6220(b)(1), struck out "CHAIRMAN" and substituted "CHAIRMEN".

[13] P.L. 101-239, §6220(b)(2), struck out "vice chairman" and substituted "4 vice chairmen".

[14] P.L. 101-239, §6220(c), inserted ", and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code".

(j) PRINTING.—For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.[15]

SEC. 406. [42 U.S.C. 1395b note] REPORT.

(a) REPORT ON COMPREHENSIVE LONG-TERM CARE SERVICES FOR THE ELDERLY AND DISABLED.—The Commission shall submit to Congress a report, [16] containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(b) REPORT ON COMPREHENSIVE HEALTH CARE SERVICES.—The Commission shall submit to Congress a report, [17] containing its findings and recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

(c) DEADLINES.—The two reports required under this section shall be submitted concurrently by not later than November 9, 1989.[18]

SEC. 407. [42 U.S.C. 1395b note] TERMINATION.

The Commission shall terminate 30 days after the date of submission of the report required in section 406(b).

SEC. 408. [42 U.S.C. 1395b note] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,500,000 to carry out this title.

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SEC. 429. [42 U.S.C. 1395b-1 note] DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for at least 5 demonstration projects, for at least 3 years each, to review the appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units. Such projects shall be conducted in consultation with the Prospective Payment Assessment Commission.

(b) WAIVER AUTHORITY.—In conducting demonstration projects under this section for units, the Secretary may treat such a unit as a rehabilitation unit described in section 1886(d)(1)(B) of the Social Security Act for purposes of such section.

[*Internal References.*—S.S. Act §1882(k) and (l) cites the Medicare Catastrophic Coverage Act of 1988 and S.S. Act titles XVIII and XIX and §§1115, 1817A, 1861(a) and (i) and 1876 catchlines and §§1813(a); 1833(a); 1861(e); 1886(b) and (d); 1902(a), 1905(p); and 1917(c) have footnotes referring to P.L. 100-360. P.L. 90-248, §402 and P.L. 92-603, §222 catchlines have a footnote referring to P.L. 100-360.]

P.L. 100-383, Approved August 10, 1988 (102 Stat. 903)
[Commission on Wartime Relocation and Internment of Civilians]

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SEC. 105. [50 U.S.C. app. 1989b-4] RESTITUTION.

(a) LOCATION AND PAYMENT OF ELIGIBLE INDIVIDUALS.—

(1) IN GENERAL.—Subject to paragraph (6), the Attorney General shall, subject to the availability of funds appropriated to the Fund for such purpose, pay out of the Fund to each eligible individual the sum of $20,000, unless such individual refuses, in the manner described in paragraph (4), to accept the payment.

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(f) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible individual under this section—

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[15] P.L. 101-239, §6220(d), added subsection (j).

[16] P.L. 101-239, §6220(e)(1), struck out ", not later than 6 months after the effective date of the first Act providing appropriations for the Commission,".

[17] P.L. 101-239, §6220(e)(1), struck out ", not later than 1 year after the effective date of the first Act providing appropriations for the Commission,".

[18] P.L. 101-239, §6220(e)(2), added subsection (c).

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

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SEC. 206. [50 U.S.C. app. 1989c-5] INDIVIDUAL COMPENSATION OF ELIGIBLE ALEUTS.

(a) PAYMENTS TO ELIGIBLE ALEUTS.—In addition to payments made under section 205, the Secretary shall, in accordance with this section, make per capita payments out of the Fund to eligible Aleuts. The Secretary shall pay, subject to the availability of funds appropriated to the Fund for such payments, to each eligible Aleut the sum of $12,000.

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(d) CLARIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Amounts paid to an eligible Aleut under this section—

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(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

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[*Internal References.*—S.S. Act titles II, XVIII, and XX and §§1612(b) and 1613(a) catchlines; and §§402(a) and 1902(a) have footnotes referring to P.L. 100-383.]

P.L. 100-407, Approved August 19, 1988 (102 Stat. 1044)

Technology-Related Assistance for Individuals With Disabilities Act of 1988

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SEC. 105. [29 U.S.C. 2215] ADMINISTRATIVE PROVISIONS.

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(c) EFFECT ON OTHER ASSISTANCE.—Nothing in this title shall be construed to permit the State or any Federal agency to reduce medical or other assistance available or to alter eligibility under—

(1) title II, V, XVI, XVIII, XIX, or XX of the Social Security Act;
(2) Individuals with Disabilities Education Act[1];
(3) the Rehabilitation Act of 1973; or
(4) laws relating to veterans' benefits.

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[*Internal References.*—S.S. Act titles IV part B and XVIII and §§428, 1612(b) and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), and 1902(a) have footnotes referring to P.L. 100-407.]

P.L. 100-409, Approved August 20, 1988 (102 Stat. 1086)

Federal Land Exchange Facilitation Act of 1988

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SEC. 5. [43 U.S.C. 1716 note] SAVING CLAUSE.

Nothing in this Act shall be construed as amending the Alaska Native Claims Settlement Act (Public Law 92-203, as amended) or the Alaska National Interest Lands Conservation Act (Public Law 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of Agriculture by either such Acts.

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[1] P.L. 101-476, §901(a)(2), struck out "Education of the Handicapped Act" and substituted "Individuals with Disabilities Education Act".

[*Internal References.*—S.S. Act titles IV part B and XVIII, and §§428, 1612(b) and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), and 1902(a) have footnotes referring to P.L. 100-409.]

P.L. 100-411, Approved August 22, 1988 (102 Stat. 1097)
[Land Claims of Coushatta Tribe of Louisiana]

SECTION 1. [None assigned.] **SETTLEMENT PAYMENT.**

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(b) The payment of such sum shall be in full settlement of, and shall finally dispose of, all rights, claims or demands which the Tribe has asserted, or could have asserted, against the United States under the provisions of the Act of August 13, 1946 (60 Stat. 1049).

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SEC. 2. [None assigned.] **USE AND DISTRIBUTION OF FUNDS.**

(a) All available funds invested by the Secretary pursuant to section 1 plus all accrued interest or income, less the amount reserved for tribal organization pursuant to section 4, shall be distributed as provided in this section.

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(d)(1) In the event that the plan provides for the per capita distribution of any portion of the funds to the members of the Tribe, such per capita payments shall be made as provided in this subsection.

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(3)(A) Upon final approval of the roll by the Secretary, the funds provided for per capita payments under the plan adopted pursuant to this section shall be paid in equal shares to persons on such roll.

(B) Payments made pursuant to this paragraph shall be subject to the provisions of section 7 of the Act of October 19, 1973 (25 U.S.C. 1407).

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[*Internal References.*—S.S. Act titles IV part B and XVIII and §§428, 1612(b) and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), 1602(a)(State), and 1902(a) have footnotes referring to P.L. 100-411.]

P.L. 100-440, Approved September 22, 1988 (102 Stat. 1721)
Treasury, Postal Service and General Government Appropriations Act, 1989

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SEC. 631. [None assigned.] For purposes of section 1886 of the Social Security Act, Missouri Baptist Hospital of Sullivan in Sullivan, Missouri is deemed to be located in Franklin County, Missouri, retroactively effective for discharges beginning on or after December 22, 1987.

[*Internal Reference.*—S.S. Act §1886 catchline has a footnote referring to P.L. 100-440.]

P.L. 100-456, Approved Sept. 29, 1988 (102 Stat. 1918)
"National Defense Authorization Act, Fiscal Year 1989"

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SEC. 523. [32 U.S.C. 709 note] MILITARY EDUCATION FOR ARMY NATIONAL GUARD CIVILIAN TECHNICIANS

(a) PHASE-OUT OF PROGRAM REQUIRING OUT-OF-STATE TRAINING.—A civilian technician of the Army National Guard whose military occupational specialty has been approved by the Secretary of the Army in accordance with subsection (b) for training under the Reserve Component Noncommissioned Officers Education Program by an appropriate National Guard school (as defined in subsection (f)) may, at the technician's option,[1] if such technician is not already qualified in that military occupational specialty, receive military training in that military occupational specialty through that school rather than through the Military Education Program.

(b) Approval of State Courses.—(1) Each National Guard school which receives from the Department of the Army a training program for National Guard training for a military occupational specialty as part of the Reserve Component Noncommissioned Officers Education Program shall implement that training program by the end of the 45-day period beginning on the receipt of such program by the school or as soon thereafter as feasible. The Secretary of the Army shall, not later than 45 days after any such school notifies the Secretary that it has implemented such a training program, determine whether or not such school has properly implemented such program. Upon the approval by the Secretary of the implementation of such program by such school, subsection (a) shall apply with respect to military education of civilian technicians of the Army National Guard of that State in the applicable military occupational specialty.

(2) In the case of a National Guard school for which a program has not been approved under paragraph (1) with respect to a military occupational specialty, the Secretary of the Army may, subject to subsection (d), require a civilian technician of the Army National Guard in that State with that military occupational specialty to receive training through the Military Education Program.

(c) Special Rule for Leadership Training.—A civilian technician of the Army National Guard who is required by the National Guard Bureau to receive leadership training through courses known as Primary Leadership Development courses may, at the technician's option,[2] receive such training through the appropriate State National Guard school.

(d) Transition.—In the case of a civilian technician of the Army National Guard for whose military occupational specialty there is not, as of the date of the enactment of this Act, a program of training approved under subsection (b) for an appropriate National Guard school, the technician shall, at his request, be given the Skill Qualification Test appropriate for his military occupational specialty and skill level. If the technician passes the test and, if necessary for his military occupational specialty, successfully completes the Army National Guard Battle Skills Course for the appropriate grade, the Secretary of the Army may not require the technician to receive training through the existing Military Education Program and may not reduce the technician in military grade, or deny the technician a military promotion, by reason of failure to receive training through the Military Education Program.

(e) Report.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the implementation of the Reserve Component Noncommissioned Officers Education Program. The report shall discuss the implementation of such program at each State National Guard school and shall explain, in any case in which the implementation of a training program has not been approved under subsection (b), the reasons for the withholding of such approval. Such report shall be submitted not later than December 31, 1988.

(f) Definitions.—For purposes of this section:

(1) The term "National Guard school", with respect to a civilian technician, means a National Guard school of that technician's State, or (2) a regional National Guard school designated by the Secretary of the Army for the region including that technician's State.

(2) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

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Sec. 601. [37 U.S.C. 1009 note] MILITARY PAY RAISE FOR FISCAL YEAR 1989

(a) Waiver of Section 1009 Adjustment.—Any adjustment required by section 1009 of title 37, United States Code, in elements of compensation of members of the uniformed services to become effective during fiscal year 1989 shall not be made.

(b) Increase in Basic Pay and BAS.—The rates of basic pay and basic allowance for subsistence of members of the uniformed services are increased by 4.1 percent effective on January 1, 1989.

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[1] P.L. 101-189, §506(d), struck out "shall" and substituted "may, at the technician's option,". As in original; one comma should be stricken.

P.L. 101-510, §1484(l)(2), struck out the second comma that had been added.

[2] P.L. 101-189, §506(d), struck out "shall" and substituted "may, at the technicans's option,".

SEC. 703. GENERAL COUNSELS OF MILITARY DEPARTMENTS

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(b) [5 U.S.C. 5316 note] PAY GRADE.—Notwithstanding section 5316 of title 5, United States Code, the General Counsel of each of the military departments shall be paid at the highest rate of basic pay payable under section 5382 of title 5, United States Code, to a member of the Senior Executive Service.

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[*Internal References.*—S.S. Act §§209(d), 210(a), and 218(b) have footnotes referring to P.L. 100-456.]

P.L. 100-485, Approved October 13, 1988 (102 Stat. 2343)
Family Support Act of 1988

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SEC. 101. IMMEDIATE INCOME WITHHOLDING.

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(c) [42 U.S.C. 666 note] STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES.—The Secretary of Health and Human Services shall conduct a study of the administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and shall report on the results of such study not later than 3 years after the date of the enactment of this Act.

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SEC. 103. STATE GUIDELINES FOR CHILD SUPPORT AWARD AMOUNTS.

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(d) [42 U.S.C. 666 note] STUDY OF IMPACT OF EXTENDING PERIODIC REVIEW REQUIREMENT TO ALL OTHER CASES.—Within 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct and complete a study to determine the impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

(e) [42 U.S.C. 666 note] DEMONSTRATION PROJECTS FOR EVALUATING MODEL PROCEDURES FOR REVIEWING CHILD SUPPORT AWARDS.—(1) Not later than April 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall enter into an agreement with each of 4 States submitting applications under this subsection for the purpose of conducting a demonstration project under part D of title IV of the Social Security Act in the State to test and evaluate model procedures for reviewing child support award amounts.

(2) Notwithstanding section 454(1) of the Social Security Act, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated by the Governor of the State involved. Under such agreement, the Secretary shall pay to the State, as an additional payment under part D of title IV of the Social Security Act, an amount equal to 90 percent of the reasonable costs incurred by the State in conducting a demonstration project under this subsection. Such costs shall not be taken into account for purposes of computing the incentive payment under section 458 of such Act.

(4) A demonstration project under this subsection shall be commenced not later than September 30, 1989, and shall be conducted for a 2-year period unless the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the State under paragraph (1).

(5)(A) Any State with an agreement under this subsection shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to Congress not later than 6 months after all such projects are completed.

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SEC. 111. PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS.

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(f) * * *

(3) [42 U.S.C. 652 note] The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(g) of the Social Security Act (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary determines that data for the full year are not available.

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SEC. 121. REQUIREMENT OF PROMPT STATE RESPONSE TO REQUESTS FOR CHILD SUPPORT ASSISTANCE.

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(b) [42 U.S.C. 652 note] Advisory Committee; Regulations.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment.

SEC. 122. REQUIREMENT OF PROMPT STATE DISTRIBUTION OF AMOUNTS COLLECTED AS CHILD SUPPORT.

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(b) [42 U.S.C. 652 note] Regulations.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment.

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SEC. 126. [42 U.S.C. 666 note] COMMISSION ON INTERSTATE CHILD SUPPORT.

(a) Establishment of Commission.—There is hereby established a Commission to be known as the Commission on Interstate Child Support (in this section referred to as the "Commission") to be composed of 15 members appointed in accordance with subsection (b)(1).

(b) Appointment and Term of Members; Vacancies; Transaction of Business.—(1) Members of the Commission shall be appointed as follows from among individuals knowledgeable in matters involving interstate child support:

(A) Four members shall be appointed jointly by the Majority and Minority Leaders of the Senate, in consultation with the chairman and ranking minority member of the Committee on Finance of the Senate.

(B) Four members shall be appointed jointly by the Speaker of the House and the Minority Leader of the House, in consultation with the chairman and ranking minority member of the Committee on Ways and Means of the House of Representatives.

(C) Seven members shall be appointed by the Secretary of Health and Human Services (in this section referred to as the "Secretary").

(2) Members of the Commission shall serve for the life of the Commission. A vacancy on the Commission shall be filled in the manner in which the original appointment was made and shall not affect the powers or duties of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(4) The members of the Commission shall be appointed by July 1, 1989. The first meeting of the Commission shall be called by the Secretary as promptly as possible after all such members are appointed. At such meeting, the members of the Commission shall select a chairman from among such members and shall meet thereafter at the call of the chairman or of a majority of the members.

(c) Basic Pay.—(1) Members of the Commission shall serve as such without pay.

(2) Members of the Commission shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the government service are allowed travel expenses under section 5703 of title 5 of the United States Code.

(d) Duties of the Commission.—(1) During the fiscal year 1991[1], the Commission shall hold one or more national conferences on interstate child support reform for the purpose of assisting the Commission in preparing the report required under paragraph (2).

(2) Not later than May 1, 1992[2], the Commission shall submit a report to the Congress that contains recommendations for—

(A) improving the interstate establishment and enforcement of child support awards, and

(B) revising the Uniform Reciprocal Enforcement of Support Act.

(e) Powers of the Commission.—(1) The Commission may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States Government.

(2) The Commission may accept, use, and dispose of donations of money and property and may accept such volunteer services of individuals as it deems appropriate.

(3) The Commission may procure supplies, services, and property, and make contracts (but only to the extent or in such amounts as are provided in appropriation Acts).

(4) For purposes of carrying out its duties under subsection (d), the Commission may adopt such rules for its organization and procedures as it deems appropriate.

(5)(A) Individuals may be appointed to serve the Commission without regard to the provisions of title 5 that govern appointments in the competitive service, without regard to the competitive service, and without regard to the classification system in chapter 53 of title 5, United States Code. The chairman of the Commission may fix the compensation of the Executive Director at a rate that shall not exceed the maximum rate of the basic pay payable under GS-18 of the General Schedule as contained in title 5, United States Code.

(B) The Executive Director may appoint and fix the compensation of such additional personnel as the Executive Director considers necessary to carry out the duties of the Commission. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(C) On the request of the chairman, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section without regard to section 3341 of title 5, United States Code.[3]

(f) Termination of the Commission.—(1) The Commission shall terminate on July 1, 1992[4].

(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on such date shall be disposed of as excess or surplus property.

(g) Authorization of Appropriations.—For the purpose of carrying out this section, there is authorized to be appropriated $2,000,000.

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SEC. 128. [42 U.S.C. 667 note] STUDY OF CHILD-REARING COSTS.

The Secretary of Health and Human Services shall, by grant or contract, conduct a study of the patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which the parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together. The Secretary shall submit to the Congress no later than 2 years after the date of the enactment of this Act a full and complete report of the results of such study, including such recommendations as the Secretary may have for legislative, administrative, and other actions. There are authorized to be appropriated such sums as may be necessary to carry out this section.

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[1] P.L. 101-508, §5012(a)(1)(A), struck out "1990" and substituted "1991".

[2] P.L. 101-508, §5012(a)(1)(B), struck out "1991" and substituted "1992".

[3] P.L. 101-508, §5012(a)(2), added paragraph (5).

[4] P.L. 101-508, §5012(a)(3), struck out "1991" and substituted "1992".

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SEC. 203. REGULATIONS; PERFORMANCE STANDARDS; STUDIES.

(a) [42 U.S.C. 681 note] REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall issue proposed regulations for the purpose of implementing the amendments made by this title, including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of Labor and with the responsible State agencies described in section 482(a)(2) of the Social Security Act.

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(c) [42 U.S.C. 681 note] IMPLEMENTATION AND EFFECTIVENESS STUDIES.—(1)(A) The Secretary shall conduct an implementation study in accordance with subparagraph (B).

(B) The implementation study conducted under subparagraph (A) shall be based on a representative sample of States and localities and shall document with respect to the programs established pursuant to part F of title IV[5] the Social Security Act—

(i) the types, mix, and costs of services offered,

(ii) participation rates or activity levels,

(iii) the characteristics of the individuals in the different type of activities,

(iv) the provisions made for child and day care and the extent to which limitations exist with respect to the availability of such care,

(v) the institutional arrangements and operating procedures under which activities are offered in the different locations, and

(vi) such other factors as the Secretary deems appropriate.

(C) There is authorized to be appropriated $500,000 for each of the fiscal years 1989, 1990, and 1991 for the purpose of conducting the implementation study under this paragraph.

(2)(A) The Secretary shall conduct a study in accordance with this paragraph to determine the relative effectiveness of the different approaches for assisting long-term and potentially long-term recipients developed by States pursuant to the programs established under part F of title IV of the Social Security Act.

(B)(i) The study required under subparagraph (A) shall be based on data gathered from demonstration projects conducted in 5 States chosen by the Secretary from among applications submitted by interested States. Such projects shall be conducted for a period of not less than 3 years upon such terms and conditions (including those involving payments to the participating States) as the Secretary may provide.

(ii) A demonstration project conducted under this subparagraph shall use specific outcome measures to test the effectiveness of particular programs. Such measures shall include educational status, employment status, earnings, receipt of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act, receipt of other transfer payments, and, to the extent possible, the poverty status of participating families.

(iii) A demonstration project conducted under this subparagraph shall use experimental and control groups that are composed of a random sample of participants in the program established under part F of title IV of the Social Security Act. The Secretary shall assure that the experimental design is comparable among localities.

(C) Participating States shall provide to the Secretary in such form and with such frequency as he requires interim data from the demonstration projects conducted under this paragraph. The Secretary shall report to the Congress annually on the progress of such projects and shall, not later than one year after the date of final data collection, submit to the Congress the study required under subparagraph (A).

(D) There is authorized to be appropriated $5,000,000 for each of the fiscal years 1990 and 1991 for the purpose of making payments to States conducting demonstration projects under this section.

(3) The Secretary shall establish such uniform reporting requirements as the Secretary determines are appropriate for the purpose of conducting the demonstration projects required under this section.

(4) Within 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall convene an advisory panel which may include

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[5] As in original; "of" missing.

representatives from the Office of Management and Budget, the Congressional Budget Office, the Congressional Research Service, and the General Accounting Office, and such other individuals and organizations as the Secretary may determine. The panel shall meet periodically to design, implement, and monitor a series of implementation and evaluation studies to assess the methods and effects of the programs initiated under this Act. Insofar as possible, the panel shall work in a collegial fashion; but if consensus cannot be reached among panel members on particular decisions the Secretary of Health and Human Services is authorized to make all final decisions about program design, use of contractors, conduct of particular studies, and any other matters which may come before the panel.

(d) [42 U.S.C. 681 note] STUDY ON APPLICATION OF JOBS PROGRAMS TO INDIANS.—The Secretary of Health and Human Services, in cooperation with the Secretary of the Interior, shall conduct a study of—

(1) the effectiveness of such employment, training, and education programs for low-income individuals as are specifically directed toward Indians in responding to the needs of Indians on reservations;

(2) the effectiveness of such programs as are not specifically directed toward Indians in responding to such needs;

(3) the extent to which such needs are not met by such programs;

(4) how such programs could be better coordinated in responding to such needs;

(5) how such programs could be improved or restructured to more effectively meet such needs;

(6) what sustainable job markets exist in Indian communities (assessed by tribe and region); and

(7) the availability of such support services (as transportation and child care) as are necessary to assist Indians on reservations in participating in such programs and obtaining permanent employment.

The Secretary of Health and Human Services and the Secretary of the Interior shall report to the Congress on the results of the study under this subsection not later than October 1, 1989 (or, if later, one year after the date of the enactment of this Act).

SEC. 204. [42 U.S.C. 681 note] EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall become effective on October 1, 1990.

(b) SPECIAL RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 203(a) (or, if earlier, the date on which such regulations are required to be published under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(k)(2) of the Social Security Act (as added by section 201(c)(1) of this Act) shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

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SEC. 302. EXTENDED ELIGIBILITY FOR CHILD CARE.

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(d) [42 U.S.C. 602 note] STUDY OF WELFARE REQUALIFICATION; REGULATIONS BASED ON RESULTS OF STUDY.—The Secretary of Health and Human Services shall conduct a study to determine whether individuals who ceased receiving aid under the State program of aid to families with dependent children approved under this part have begun again to receive such aid in order to requalify for additional months of transition benefits, and if the study reveals that such is the case, the Secretary shall, not earlier than October 1, 1991, issue regulations which restrict such requalification.

(e) [42 U.S.C. 602 note] STUDY ON EFFECTS OF EXTENDING ELIGIBILITY FOR CHILD CARE.—The Secretary of Health and Human Services shall conduct a study on the effectiveness of the amendments made by this section in reducing welfare dependence and assisting families in making the transition from welfare to employment, and such other effects of such amendments as the Secretary may find appropriate, and shall report the results of such study not later than September 30, 1997.

SEC. 303. EXTENDED ELIGIBILITY FOR MEDICAL ASSISTANCE.

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(c) [42 U.S.C. 1396r-6 note] STUDY AND REPORT.—(1) The Secretary of Health and Human Services shall conduct a study of the impact of the medicaid extension provisions under section 1925 of the Social Security Act, with particular focus on the costs of such provisions and the impact on welfare dependency, and shall report to Congress on the results of such study not later than April 1, 1993.

(2) The study under paragraph (1) shall include an examination of—

(A) the extent to which the availability of extended medicaid benefits affects access to and use of medical services,

(B) the relative effectiveness of different types of coverage provided by States,

(C) the effect of requiring families to pay premiums or incur any other expenses with respect to such extended benefits, and

(D) whether individuals who have exhausted such benefits recycle onto welfare for short periods of time in order to requalify for such extended benefits.

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SEC. 401. BENEFITS FOR TWO-PARENT FAMILIES.

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(e) [42 U.S.C. 607 note] EVALUATION AND REPORT.—(1) The Secretary of Health and Human Services shall evaluate the time-limited and conventional State programs conducted under section 407 of the Social Security Act (as amended by this section), including the effects of the work requirement applicable to families receiving benefits under such section.

(2) The Secretary shall, not later than July 1, 1996, submit to the Congress an interim report containing the findings of such evaluation together with recommendations for any changes in such program, and shall, not later than July 1, 1998, submit to the Congress a final report containing such findings and recommendations.

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SEC. 405. [None assigned.] CBO STUDY ON IMPLEMENTATION OF NATIONAL MINIMUM PAYMENT STANDARD.

(a) IN GENERAL.—The Congressional Budget Office shall conduct a study on the implementation of the amendments proposed by section 101 of the bill introduced in the Senate of the United States during the 100th Congress and designated S. 862 (relating to the requirement of a minimum payment standard under part A of title IV of the Social Security Act with a Federal matching rate of 90 percent).

(b) DESCRIPTION OF STUDY.—The study conducted under subsection (a) shall assess the extent to which—

(1) the goal of budget neutrality may be preserved by repealing the programs included in, but not limited to, the programs described in the amendments proposed by section 301 of the bill described in subsection (a) over a more gradual period of time in conjunction with corresponding increases (up to 90 percent) in the Federal matching rates under part A of title IV, and title XIX, of the Social Security Act; and

(2) the effects on local governments of repealing Federal programs could be mitigated by providing, over a period of time that corresponds with more gradual increases in the Federal matching rates under such part A and title XIX, general revenue supplements to those localities with the lowest levels of fiscal capacity and pass-throughs to units of local government.

(c) REPORT TO CONGRESS.—The Congressional Budget Office shall report on the results of the study conducted under this section not later than 12 months after the date of the enactment of this Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 406. [42 U.S.C. 602 note] STUDY OF NEW NATIONAL APPROACHES TO WELFARE BENEFITS FOR LOW-INCOME FAMILIES WITH CHILDREN.

(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract or arrangement with the National Academy of Sciences for the study of a new national system of welfare benefits for low-income families with children, giving particular attention to what an appropriate national minimum benefit might be and how it should be calculated. The study shall give consideration to alternative minimum benefit proposals including proposals for benefits based on a family living standard, on weighted national median income, on State median income, and on the poverty level, and shall take into account the probable impact of a national minimum benefit on individuals and on State and local governments.

(b) METHODOLOGY.—(1) The study under this section shall include the development of a uniform national methodology which could be used to calculate State-specific family living standards and benefits based on other minimum benefit proposals.

(2) The methodology so developed shall be designed to identify a single uniform measure suitable for application in each State, and shall—

(A) take into account actual living costs in each State while permitting variances in such costs as between the different geographic areas of the State;

(B) take into account variations in actual living costs in each State for families of different sizes and composition; and

(C) specify an effective process for reassessing and updating both the methodology and the resulting family living standards and benefits based on other minimum benefit policies at least once every 4 years.

(3) The methodology so developed shall reflect the costs of basic necessities including housing, furnishings, food, clothing, transportation, utilities, and other maintenance items; and the study shall take into account variations in costs for different geographic areas of the State where such costs may be substantially different, and variations in costs for families of different sizes and composition.

(c) OTHER CONSIDERATIONS; PROGRESSION TO PROPOSED MINIMUM BENEFIT LEVELS.—In order to assess the implications of States moving to a new system of welfare benefits, the study shall include an analysis of the relationship between a State's fiscal capacity and other circumstances and constraints and the application of a full family living standard or other minimum benefit policy. The study shall propose a formula designed to achieve a uniform progression from the level of assistance currently being provided for low-income families with children under the AFDC program, the food stamp program, and the low-income energy assistance program, by each State, to a level based on the full family living standard or other minimum benefit policy for that State. For this purpose the Secretary shall define the term "low-income families with children" in a manner which reflects all families that include dependent children as defined for purposes of the AFDC program.

(d) REPORT AND RECOMMENDATIONS.—The Academy shall report its recommendations resulting from the study under this section to the Secretary no later than 24 months after the date of the enactment of this Act; and the Secretary shall promptly transmit such recommendations to the Congress.

(e) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 501. [42 U.S.C. 1315 note] FAMILY SUPPORT DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act and participating in the job opportunities and basic skills training program under part F of title IV of such Act, up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall prescribe, and no such project shall be conducted for a period of more than 3 years.

(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act, any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act and community-based organizations having experience and demonstrated effectiveness in providing services.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.

SEC. 502. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS.

(a) IN GENERAL.—In order to encourage States to employ or arrange for the employment of parents of dependent children receiving aid under State plans approved under section 402(a) of the Social Security Act as providers of child care for other children receiving such aid, up to 5 States may undertake and carry out demonstration projects designed to test whether such employment will effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of such Act by making additional child care services available to meet the requirements of section 402(g)(1)(A) of such Act while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider.

(b) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services shall consider all applications received from States desiring to conduct demonstration projects under this section, shall approve up to 5 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section, and shall make grants to those States the applications of which are approved to assist them in carrying out such projects. Each project conducted under this section shall meet such conditions and requirements as the Secretary shall prescribe.

(c) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to carry out demonstration projects under this section, there is authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992.

(d) EFFECTIVE DATE.—This section shall become effective on October 1, 1989.

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SEC. 504. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS.

(a) IN GENERAL.—Any State may establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements as the Secretary of Health and Human Services shall prescribe, except that no such project may include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders.

(b) ACTIVITIES UNDER PROJECT.—Activities that may be funded by a grant under this section include (whether conducted through the executive, legislative, or judicial branches of the State) the development of systematic procedures for enforcing access provisions of court orders, the establishment of special staffs to deal with and mediate disputes involving access (both before and after a court order has been issued), and the dissemination of information to parents.

(c) OTHER REQUIREMENTS.—In the case of any experimental, pilot, or demonstration project undertaken under this section, the project—

(1) must be designed to improve the financial well-being of families with children or otherwise improve the operation of the program or programs involved; and

(2) may not permit modifications in any program which would have the effect of disadvantaging children in need.

(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to assist in financing the projects established under this section, there is authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991.

(e) REPORT.—Not later than July 1, 1992, the Secretary of Health and Human Services shall submit to the Congress a report on the effectiveness of the demonstration projects established under this section in—

(1) decreasing the time required for the resolution of disputes related to child access,

(2) reducing litigation relating to access disputes, and

(3) improving compliance with court-ordered child support payments.

SEC. 505. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO EXPAND THE NUMBER OF JOB OPPORTUNITIES AVAILABLE TO CERTAIN LOW-INCOME INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") in each of the fiscal years 1990, 1991, and 1992,[6] shall enter into agreements with not less than 5 nor more than 10 nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting demonstration projects in accordance with subsection (b) to create employment opportunities for certain low-income individuals.

(b) NATURE OF PROJECT.—(1) Each nonprofit organization conducting a demonstration project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.

(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive aid to families with dependent children under part A of title IV of the Social Security Act and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(c) CONTENT OF APPLICATIONS; SELECTION PRIORITY.—(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

(A) the technical and financial assistance that will be made available under the project conducted under this section;

(B) the geographic area to be served by the project;

(C) the percentage of low-income individuals (as described in subsection (b)) and individuals receiving aid to families with dependent children under title IV of the Social Security Act in the area to be served by the project; and

(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving aid to families with dependent children under title IV of such Act.

(d) ADMINISTRATION.—Each nonprofit organization participating in a demonstration project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the job opportunities and basic skills training program (as provided for under title IV of the Social Security Act) in the area served by the project.

(e) DURATION.—Each demonstration project conducted under this section shall be commenced not later than September 30 of the fiscal year specified in the agreement described in subsection (a)[7], and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the nonprofit organization conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

(f) EVALUATION AND REPORT.—(1) The Secretary shall conduct an evaluation of the success of each demonstration project conducted under this section in creating job opportunities and may require each nonprofit organization conducting such a project to provide the Secretary with such information as the Secretary determines is necessary to prepare the report described in paragraph (2).

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[6] P.L. 101-508, §5063(1), inserted "in each of the fiscal years 1990, 1991, and 1992,".

[7] P.L. 101-508, §5063(a), struck out "September 30, 1989" and substituted "September 30 of the fiscal year specified in the agreement described in subsection (a)".

(2) Not later than January 1, 1993, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted under paragraph (1), together with such recommendations as the Secretary determines are appropriate.

(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,500,000 for each of the fiscal years 1990, 1991, and 1992.

SEC. 506. [42 U.S.C. 1315 note] DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS.

(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

(1) The State shall establish a "Teen Care Plan" that shall consist of the following:

(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community.

(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the "home base" for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a "peripheral" participant, receiving assistance and services from the home base.

(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

(A) has a history of academic problems;
(B) has a history of behavioral problems both in and out of school;
(C) comes from a one-parent household; or
(D) is pregnant or is a mother of a child.

(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

(A) shall consult with the Consortium on Adolescent Pregnancy;
(B) shall consider—
  (i) the rate of teenage pregnancy in each State,
  (ii) the teenage school dropout rate in each State,
  (iii) the incidence of teenage substance abuse in each State, and
  (iv) the incidence of teenage suicide in each State; and
(C) shall give priority to States whose applications—

(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

(ii) contain a "State support agreement" signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

(iv) indicate a demonstrably high rate of alcoholism among its residents.

(2) Of the States selected to participate in the demonstration projects conducted under this section—

(A) one shall be a geographically small State with a population of less than 1,250,000;

(B) one shall be a State with a population of over 20,000,000; and

(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

(e) Evaluation and Report.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

(f) Funding.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

(g) Duration.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

(h) Authorization of Appropriations.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.

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SEC. 608. MISCELLANEOUS TECHNICAL CORRECTIONS TO MEDICARE CATASTROPHIC COVERAGE ACT OF 1988.

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(e) [None assigned.] Extension of Pilot Program.—The Secretary of Health and Human Services shall extend through December 31, 1989, the pilot test program, being conducted by States under the Annual Grant Award Study established by the Joint State/Federal Cash Management Reform Task Force, on the same terms and conditions that existed as of September 30, 1988.

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(h) [42 U.S.C. 1396b note] Quality Control Transition.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to medicare-cost sharing for qualified medicare beneficiaries (as defined in section 1905(p) of such Act).

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[*Internal References.*—S.S. Act §§482(i), 484(f), 486(a), and 487(a) and (b) cite the Family Support Act of 1988 and S.S. Act title IV and parts A, C, and F and §§407, 466, 487, 1115, and 1925 catchlines and §§402(a) and (g); 403(a), (c), (d), (k), and (l); 407(b), (c), (d), and (e); 409; 414; 452(g), (h), and (i); 471(a); 1108(a) and (b); 1902(a); 1903(u); and 1928(a) have footnotes referring to P.L. 100-485.]

P.L. 100-505, Approved October 18, 1988 (102 Stat. 2533)
Abandoned Infants Assistance Act of 1988

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SEC. 201. [42 U.S.C. 670 note] STUDY AND REPORT ON ASSISTANCE.

(a) STUDY.—The Secretary shall conduct a study for the purpose of—

(1) determining cost-effective methods for providing assistance to individuals for the medical costs of treatment of conditions arising from infection with the etiologic agent for acquired immune deficiency syndrome, including determining the feasibility of risk-pool health insurance for individuals at risk of such infection;

(2) determining the extent to which Federal payments under title XIX of the Social Security Act are being expended for medical costs described in paragraph (1); and

(3) providing an estimate of the extent to which such Federal payments will be expended for such medical costs during the 5-year period beginning on the date of the enactment of this Act.

(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this Act, complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

SEC. 301. [42 U.S.C. 670 note] DEFINITIONS.

For purposes of this Act:

(1) The term "acquired immune deficiency syndrome" includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

(2) The term "Secretary" means the Secretary of Health and Human Services.

[*Internal References.*—S.S. Act title XIX and §470 catchlines have footnotes referring to P.L. 100-505.]

P.L. 100-581, Approved November 1, 1988 (102 Stat. 2938)
[Indian Reorganization Act Amendments]

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SEC. 501. [None assigned.] That, notwithstanding any provision of the Act of October 19, 1973 (87 Stat. 466; 25 U.S.C. 1401, et seq.), or any other law, regulation, or plan promulgated pursuant thereto, the funds appropriated in satisfaction of the judgment awarded to the Wisconsin Band of Potawatomi in docket 28 of the United States Claims Court (including all interests and investment income accrued thereon) shall be used and distributed as provided in this title.

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SEC. 502. [None assigned.]

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(b)(1) The funds allocated to each Indian tribe under subsection (a), and any interest and investment income accrued on such funds, are hereby declared to be held in trust by the United States for the benefit of such Indian tribe and shall be invested by the Secretary of the Interior for the benefit of such Indian tribe.

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SEC. 503. [None assigned.] None of the funds held in trust by the United States under this title (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds made available under this title for programs or for distributions under any programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which any household or individual would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

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[*Internal References.*—S.S. Act title XVIII and part B and §§428, 1612(b), and 1613(a) catchlines and §§402(a), 403(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 100-581.]

P.L. 100-628, Approved November 7, 1988 (102 Stat. 3224)
Stewart B. McKinney Homeless Assistance Amendments Act of 1988

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SEC. 902. [None assigned.] **REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.**

(a) Review of Policy.—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) Report to Congress.—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

SEC. 903. [42 U.S.C. 11381 note.] **DEMONSTRATION PROJECTS TO REDUCE NUMBER OF HOMELESS AFDC FAMILIES IN WELFARE HOTELS.**

(a) In General.—In order to enable States to provide housing for homeless families who are recipients of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act in transitional facilities instead of in commercial or similar transient facilities, at least 2 but not more than 3 States may undertake and carry out demonstration projects in accordance with this section. States may use public or private nonprofit agencies in carrying out demonstration projects in accordance with this section. Demonstration projects under this section shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall prescribe.

(b) Duties of Secretary of Health and Human Services.—The Secretary shall—

(1) consider all applications received from States desiring to conduct demonstration projects under this section;

(2) transmit to the Comptroller General for review under subsection (e) a copy of each such application received;

(3) approve at least 2 but not more than 3 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this section; and

(4) make grants from funds appropriated to carry out this section to each State whose application is so approved to carry out the project that is the subject of the application.

(c) Project Requirements.—The Secretary shall not approve an application received from a State for a demonstration project under this section unless the State agency that administers the program of aid to families with dependent children in the State under a State plan approved under part A of title IV of the Social Security Act demonstrates that the project will—

(1) provide housing in transitional facilities only to homeless families who are recipients of aid to families with dependent children under the State plan and who reside in commercial or similar transient facilities;

(2) permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities in accordance with paragraph (1); and

(3) provide that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the State under this section must be less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(d) USE OF FUNDS.—Each State that receives funds under this section shall use such funds to—

(1) rehabilitate or construct transitional facilities which are easily convertible to permanent housing when such facilities are no longer needed as transitional facilities; and

(2) provide on-site social services at such facilities.

(e) GAO REVIEW OF APPLICATIONS.—Within 90 days after the Comptroller General receives from the Secretary a copy of an application submitted under this section, the Comptroller General shall review such application and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on whether the Federal share of the total amount of cash assistance to be provided under the project which is the subject of the application to families residing in transitional facilities plus the total amount of grants to be made to the State under this section is less than or equal to the Federal share of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

(f) AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there is authorized to be appropriated to the Secretary for the fiscal year 1990 not to exceed $20,000,000, which shall remain available until expended.

(g) DEFINITIONS.—As used in section 902 and this section:

(1) HOMELESS FAMILY.—The term "homeless family" means a dependent child or children and the relatives with whom such child or children are living, who—

(A) lack a fixed and regular nighttime address;

(B) have a primary residence that is a shelter designed for temporary accommodation, a hotel, or a motel; or

(C) are living in a place not designed for, or ordinarily used as, a regular sleeping accommodation.

(2) COMMERCIAL OR SIMILAR TRANSIENT FACILITIES.—The term "commercial or similar transient facilities" means transient accommodations in—

(A) a commercial hotel or motel operated by a privately owned for-profit entity; or

(B) a similar establishment which is not a transitional facility (whether or not directly operated or contracted for by the State or a political subdivision or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations).

(3) TRANSITIONAL FACILITY.—The term "transitional facility" means any facility operated by a State or local government or a nonprofit organization which, at a minimum—

(A) provides temporary and private sleeping accommodations, and temporary eating and cooking accommodations; and

(B) provides services to help families locate and retain permanent housing.

SEC. 904. [42 U.S.C. 3544] PREVENTING FRAUD AND ABUSE IN HOUSING AND URBAN DEVELOPMENT PROGRAMS.

* * * * * * *

(c) ACCESS TO STATE EMPLOYMENT RECORDS.—

* * * * * * *

(2) APPLICANT AND PARTICIPANT PROTECTIONS.—(A) In order to protect applicants for, and recipients of, benefits under the programs of the Department of Housing and Urban Development from the improper use of information obtained pursuant to the requirements of section 303(i) of the Social Security Act from the State agency charged with the administration of the State unemployment compensation law, officers and employees of the Department of Housing and Urban Development and representatives of public housing agencies may only use such information—

(i) to verify an applicant's or participant's eligibility for or level of benefits; or

(ii) in the case of an owner responsible for determining eligibility for or level of benefits, to inform such owner that an applicant's or participant's eligibility for or level of benefits is uncertain and to request such owner to verify such applicant's or participant's income information.

(B) No Federal, State, or local agency, or public housing agency, or owner responsible for determining eligibility for or level of benefits receiving such information may terminate, deny, suspend, or reduce any benefits of an applicant or participant until such agency or owner has taken appropriate steps to independently verify information relating to—

(i) the amount of the wages or unemployment compensation involved,

(ii) whether such applicant or participant actually has (or had) access to such wages or benefits for his or her own use, and

(iii) the period or periods when, or with respect to which, the applicant or participant actually received such wages or benefits.

(C) Such applicant or participant shall be informed by the agency or owner of the findings made by the agency or owner on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(3) Penalty.—(A) Any person who knowingly and willfully requests or obtains any information concerning an applicant or participant pursuant to the authority contained in section 303(i) of the Social Security Act under false pretenses, or any person who knowingly and willfully discloses any such information in any manner to any individual not entitled under any law to receive it, shall be guilty of a misdemeanor and fined not more than $5,000. The term "person" as used in this paragraph shall include an officer or employee of the Department of Housing and Urban Development, an officer or employee of any public housing agency, and any owner responsible for determining eligibility for or level of benefits (or employee thereof).

(B) Any applicant or participant affected by (i) a negligent or knowing disclosure of information referred to in this section or in section 303(i) of the Social Security Act about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), or any regulation implementing this section or such section 303(i), or (ii) any other negligent or knowing action that is inconsistent with this section, such section 303(i), or any such implementing regulation may bring a civil action for damages and such other relief as may be appropriate against any officer or employee of any public housing agency or owner (or employee thereof) responsible for any such unauthorized action. The district court of the United States in the district in which the affected applicant or participant resides, in which such unauthorized action occurred, or in which the applicant or participant alleged to be responsible for any such unauthorized action resides, shall have jurisdiction in such matters. Appropriate relief that may be ordered by such district courts shall include reasonable attorney's fees and other litigation costs.

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[*Internal References.*—S.S. Act titles III and IV part A catchlines have footnotes referring to P.L. 100-628.]

P.L. 100-647, Approved November 10, 1988 (102 Stat. 3342)
Technical and Miscellaneous Revenue Act of 1988

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SEC. 8014. CLARIFICATION OF APPLICABILITY OF GOVERNMENT PENSION OFFSET TO CERTAIN FEDERAL EMPLOYEES.

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(b) [42 U.S.C. 402 note] Treatment of Employees Whose Federal Employment Terminated After Making an Election Into Social Security Coverage But Before the Effective Date of the Election.—Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402(b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided

in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act), and

(2) such service terminated before the date on which such election became effective.

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SEC. 8019. [None assigned.] REPORTS REGARDING CERTAIN DISABILITY-RELATED BENEFITS.

(a) Eligibility for Benefits.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report providing information on—

(1) the number of individuals with the complex related to acquired immune deficiency syndrome (hereinafter in this section referred to as "AIDS-related complex") who have made application for disability-related benefits under titles II and XVI of the Social Security Act during fiscal years 1988, 1987, and, to the extent feasible, 1986;

(2) the number of such applications approved, denied (by reason of denial), and reversed upon appeal;

(3) the rates of allowance and denial of such applications by State and region, to the extent feasible;

(4) the criteria, guidelines, or other information used to determine eligibility (including copies of the documents setting forth such criteria, guidelines, and information) including information about any changes in criteria that are under consideration;

(5) the total costs of disability-related benefits provided to individuals with AIDS-related complex during fiscal years 1988, 1987, and to the extent feasible, 1986; and

(6) to the extent available, the projected number of such applications that will likely be approved and denied and the estimated costs of such benefits for the next 3 fiscal years.

(b) Coordination of Federal and State Disability Programs.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report describing what arrangements, if any, now exist to provide for coordination between the Social Security Administration and State disability agencies with respect to the provision of disability-related benefits under titles II and XVI of the Social Security Act and State disability insurance programs to individuals with acquired immune deficiency syndrome or AIDS-related complex and to make such individuals applying for any such benefits aware of the full range of Federal and State disability-related benefits for which such individuals may be eligible.

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SEC. 8102. [None assigned.] REVIEW OF POLICY GOVERNING USE OF AFDC FUNDS TO MEET EMERGENCY NEEDS OF FAMILIES ELIGIBLE FOR AFDC THROUGH EMERGENCY ASSISTANCE OR SPECIAL NEEDS PAYMENTS; REPORT TO CONGRESS.

(a) Review of Policy.—The Secretary of Health and Human Services shall review the policies in effect, as of the date of the enactment of this section, with respect to the use by States of amounts paid to such States under the program of aid to families with dependent children under part A of title IV of the Social Security Act, in the form of payments of aid to meet special needs or emergency assistance under section 406(e) of such Act to meet emergency needs of families who are eligible for such aid.

(b) Report to Congress.—Not later than July 1, 1989, the Secretary of Health and Human Services shall submit to the Congress a report containing recommendations for legislative and regulatory changes designed to—

(1) improve the ability of the program of aid to families with dependent children under part A of title IV of the Social Security Act to respond to emergency needs of families who are eligible for such aid; and

(2) eliminate the use of funds provided to States under such program to pay for the provision of shelter in commercial or similar transient facilities.

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SEC. 8403. APPLICATION OF WAGE INDICES IN CASE OF AREAS AFFECTED BY SECTION 4005(A)(1) OF OBRA OF 1987.

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(b) [None assigned.] HHS Report on Adjustment of Hospital Wage Indices for Fiscal Year 1989.—

(1) The Secretary of Health and Human Services shall report to the Congress, not later than 60 days after the date of the enactment of this Act, on alternative methods for reimbursement under section 1886(d) of the Social Security Act to hospitals located in affected areas described in paragraph (2) for hospital discharges occurring in fiscal year 1989 that would result in aggregate payments under title XVIII of such Act to hospitals in such areas in an amount no less than would have been paid without the enactment of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987. In reporting concerning alternative methods, the Secretary shall consider both legislative and administrative actions that would result in an aggregate increase in payments under such title and legislative and administrative actions that would not result in such an aggregate increase.

(2) An affected area described in this paragraph is an area for which the area wage index for fiscal year 1989 (described in section 1886(d)(3)(E) of the Social Security Act) was reduced below the amount otherwise applicable as a result of the amendments made by section 4005(a)(1) of the Omnibus Budget Reconciliation Act of 1987.

(c) [None assigned.] ProPAC Study and Report.—The Prospective Payment Assessment Commission shall study and make a report to Congress within 9 months after the date of the enactment of this Act on the appropriate payment for hospitals affected by subparagraphs (B) and (C) of section 1886(d)(8) of the Social Security Act (as amended by subsection (a) of this section) and the appropriate treatment of the wage and wage-related costs of such hospitals in computing area wage indices.

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SEC. 8405. [42 U.S.C. 1395ww note] ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES.

With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act.

SEC. 8411. [42 U.S.C. 1395b-1 note] TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS.

(a) Demonstration of Joint Nursing Graduate Education Programs.—

(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

(A) involves a substantial clinical component (as determined by the Secretary), and

(B) leads to a master's or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972, which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act, and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1986 through[1] 1991.

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SEC. 8421. TRIP FEES FOR CLINICAL LABORATORIES.

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(b) [42 U.S.C. 1395l note] BUDGET NEUTRALITY.—The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act for tests not covered under the amendment made by subsection (a) in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.

(c) [None assigned.] STUDY.—The Secretary of Health and Human Services shall study reimbursement for specimen collection and transportation and personnel costs under section 1833(h)(3) of the Social Security Act and shall report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate by May 1, 1989. The study shall—

(1) survey carrier policies regarding such reimbursement,

(2) report on concerns expressed by clinical diagnostic laboratories concerning such reimbursement, and

(3) make recommendations to assure that such reimbursement is reasonable, covers the costs involved, and assures adequate access to clinical laboratory services for nursing facility residents.

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SEC. 8427. [42 U.S.C. 1395x note] PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED.

(a) IN GENERAL.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act) transportation on a commercial airliner is covered under section 1861(s)(7) of the Social Security Act, the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.

SEC. 8431. [None assigned.] DELAY IN ISSUANCE OF FINAL REGULATIONS CONCERNING THE USE OF VOLUNTARY CONTRIBUTIONS AND PROVIDER-PAID TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS.

The Secretary of Health and Human Services shall not issue any final regulation prior to December 31, 1990[2], changing the treatment of voluntary contributions or provider-paid taxes utilized by States to receive Federal matching funds under title XIX of the Social Security Act.

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SEC. 8435. [42 U.S.C. 1396a note] CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES.

The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act that provides for coverage of case-management services described in section 1915(g)(2) of such Act, or to deny payment to a State for such services under section 1903(a)(1) of such Act on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.

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[1] P.L. 101-239, §6205(a)(1)(B), struck out "1989, 1990, and" and substituted "1986 through".

[2] P.L. 101-239, §6411(b), struck out "May 1, 1989" and substituted "December 31, 1990".

* * * * * * *

[*Internal References.*—S.S. Act titles II, IV part A, XVI (SSI), XVIII, and XIX catchlines and §§202(b), (c), (e), (f), and (g); 406(e); 1833(h); 1861(s); and 1886(d) and (e) have footnotes referring to P.L. 100-647.]

P.L. 100-690, Approved November 18, 1988 (102 Stat. 4181)
Anti-Drug Abuse Act of 1988

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SEC. 2306. [42 U.S.C. 11705] ADMINISTRATION OF GRANTS AND CONTRACTS.

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(c) ADMINISTRATIVE REQUIREMENTS.—The Secretary may not make a grant or enter into a contract under this subtitle with an entity unless the entity—

* * * * * * *

(4) with respect to health services that are covered in the plan of the State of Hawaii approved under title XIX of the Social Security Act—
  (A) if the entity will provide under the grant or contract any such health services directly—
    (i) the entity has entered into a participation agreement under such plan; and
    (ii) the entity is qualified to receive payments under such plan; and
  (B) if the entity will provide under the grant or contract any such health services through a contract with an organization—
    (i) the organization has entered into a participation agreement under such plan; and
    (ii) the organization is qualified to receive payments under such plan; and

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Subtitle G—Denial of Federal Benefits to Drug Traffickers and Possessors.

SEC. 5301. [21 U.S.C. 853a] DENIAL OF FEDERAL BENEFITS TO DRUG TRAFFICKERS AND POSSESSORS.

(a) DRUG TRAFFICKERS.—(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances (as such terms are defined for purposes of the Controlled Substances Act) shall—

* * * * * * *

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

* * * * * * *

(d) DEFINITIONS.—As used in this section—
(1) the term "Federal benefit"—

* * * * * * *

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

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[*Internal References.*—S.S.Act titles II, IV, XVI (SSI), XVIII and XIX catchlines have footnotes referring to P.L. 100-690.]

P.L. 100-713, Approved November 23, 1988 (102 Stat. 4784)
Indian Health Care Amendments of 1988

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PROVISION OF SERVICES IN MONTANA

SEC. 712. [None assigned.] (a) The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide services and benefits for Indians in Montana in a manner consistent with the decision of the United States Court of Appeals for the Ninth Circuit in McNabb for McNabb v. Bowen, 829 F.2d 787 (9th Cir. 1987).

(b) The provisions of subsection (a) shall not be construed to be an expression of the sense of the Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana.

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[*Internal Reference.*—S.S. Act title XVIII and §1911 catchlines have footnotes referring to P.L. 100-713.]

P.L. 101-41, Approved June 21, 1989 (103 Stat. 83)

Puyallup Tribe of Indians Settlement Act of 1989

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SEC. 10. [25 U.S.C. 1773h] **MISCELLANEOUS PROVISIONS.**

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(b) ELIGIBILITY FOR FEDERAL PROGRAMS; TRUST RESPONSIBILITY.—Nothing in this Act or the Settlement Agreement shall affect the eligibility of the Tribe or any of its members for any Federal program or the trust responsibility of the United States and its agencies to the Tribe and members of the Tribe.

(c) PERMANENT TRUST FUND NOT COUNTED FOR CERTAIN PURPOSES.—None of the funds, assets, or income from the trust fund established in section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any Federal, State, or local program.

(d) TAX TREATMENT OF FUNDS AND ASSETS.—None of the funds or assets transferred to the Tribe or its members by the Settlement Agreement of this Act, and none of the interest earned or income received on amounts in the funds established under section 6(a) and (b), shall be deemed to be taxable, nor shall such transfers be taxable events.

* * * * * * *

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have footnotes referring to P.L. 101-41.]

P.L. 101-42, Approved June 28, 1989 (103 Stat. 91)

Coquille Restoration Act

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SEC. 3. [25 U.S.C. 715a] **RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.**

(a) FEDERAL RECOGNITION.—Notwithstanding any provision of law, Federal recognition is hereby extended to the Coquille Indian Tribe. Except as otherwise provided herein, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this Act shall be applicable to the Tribe and its Members.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—Except as provided in subsection (d) of this section, all rights and privileges of this Tribe and of its Members under any Federal treaty, Executive order, agreement or statute or under any other authority, which were diminished or lost under the Act of August 13, 1954 (68 Stat. 724), are hereby restored and provisions of said Act shall be inapplicable to the Tribe and its Members after the date of enactment of this Act.

(c) FEDERAL SERVICES AND BENEFITS.—Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its Members shall be eligible, on and after the date of enactment of this Act, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized tribes residing on a reservation, Members of the Tribe in the Tribe's service area shall be deemed to be residing on a reservation. Notwithstanding any other provision of law, the Tribe shall be considered an Indian tribe for the purpose of the Indian Tribal Government Tax Status Act (26 U.S.C. 7871).

(d) HUNTING, FISHING, TRAPPING, AND WATER RIGHTS.—Nothing in this Act shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its Members.

(e) INDIAN REORGANIZATION ACT APPLICABILITY.—The Act of June 18, 1934 (48 Stat. 984), as amended, shall be applicable to the Tribe and its Members.

(f) CERTAIN RIGHTS NOT ALTERED.—Except as specifically provided in this Act, nothing in this Act shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

* * * * * * *

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a) and 1602(a)(State) have footnotes referring to P.L. 101-42.]

P.L. 101-121, Approved October 23, 1989 (103 Stat. 701)

[Appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

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[None assigned] *Provided further*, That the amounts collected by the Secretary of Health and Human Services under the authority of title IV of the Indian Health Care Improvement Act shall be available for two fiscal years after the fiscal year in which they were collected, for the purpose of achieving compliance with the applicable conditions and requirements of titles XVIII and XIX of the Social Security Act (exclusive of planning, design, construction of new facilities, or major renovation of existing Indian Health Service facilities):

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[*Internal References.*—S.S. Act titles XVIII and XIX catchlines have a footnote referring to P.L. 101-121.]

P.L. 101-166, Approved November 21, 1989 (103 Stat. 1159)

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990

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Social Security Administration

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LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, not more than $3,837,389,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, [42 U.S.C. 1383 note] That travel expense payments under section 1631(h) of such Act for travel to hearings may be made only when travel of more than seventy-five miles is required: * * * *Provided further*, That none of the funds appropriated by this Act may be used for the manufacture, printing, or procuring of social security cards, as provided in section 205(c)(2)(D) of the Social

Security Act, where paper and other materials used in the manufacture of such cards are produced, manufactured, or assembled outside of the United States.

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SEC. 204. [None assigned.] None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

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SEC. 221. [None assigned.] During the twelve-month period beginning October 1, 1989, none of the funds made available under this Act may be used to impose any reductions in payment, or to seek repayment from or to withhold any payment to any State pursuant to section 427 or 471 of the Social Security Act, as a result of a disallowance determination made in connection with a compliance review for any Federal fiscal year preceding Federal fiscal year 1990, until all judicial proceedings, including appeals, relating to such disallowance determination have been finally concluded, nor may such funds be used to conduct further compliance reviews with respect to any State which is a party to such judicial proceeding until such proceeding has been finally concluded.

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[*Internal References.*—S.S. Act §1631(h) catchline and §205(c) have a footnote referring to P.L. 101-166.]

P.L. 101-201, Approved December 6, 1989 (103 Stat. 1795)
[Agent Orange Settlement Payment]

SECTION 1. [None assigned.] AGENT ORANGE SETTLEMENT PAYMENTS EXCLUDED FROM COUNTABLE INCOME AND RESOURCES UNDER FEDERAL MEANS-TESTED PROGRAMS.

(a) IN GENERAL.—That none of the payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.), shall be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted program.

(b) EFFECTIVE DATE.—The provision in subsection (a) shall become effective January 1, 1989.

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have a footnote referring to P.L. 101-201.]

P.L. 101-234, Approved December 13, 1989 (103 Stat. 1979)
Medicare Catastrophic Coverage Repeal Act of 1989

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SEC. 101. REPEAL OF EXPANSION OF MEDICARE PART A BENEFITS.

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(b) [42 U.S.C. 1395e note] TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act, as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

(B) with respect to the limitation (other than the limitation under section 1812(c) of such Act)[1] on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as "lifetime reserve days") shall be counted;

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[1] P.L. 101-508, §4008(m)(1), inserted "(other than the limitation under section 1812(c) of such Act)".

(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

(D) the inpatient hospital deductible under section 1813(a)(1) of such Act shall not apply—

(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

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(c) TERMINATION OF TRANSITIONAL ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.—

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(2) PPS-EXEMPT HOSPITALS.—

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(B) [42 U.S.C. 1395ww note] TRANSITION.—The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title.

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SEC. 102. REPEAL OF SUPPLEMENTAL MEDICARE PREMIUM AND FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.

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(c) [42 U.S.C. 1395t note] DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND.—Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act, as inserted by section 112(a) of MCCA) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medicare Insurance Trust Fund.

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SEC. 203. AMENDMENT OF CERTAIN MISCELLANEOUS PROVISIONS.

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(b) [42 U.S.C. 1395mm note] ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS.—Notwithstanding any other provision of this Act, the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act) shall not apply to risk-sharing contracts, for contract year 1990—

(1) with eligible organizations under section 1876 of the Social Security Act, or

(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967, or under section 222(a) of the Social Security Amendments of 1972.

(c) [42 U.S.C. 1395b-2 note] NOTICE OF CHANGES.—The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act for 1990, for a description of the changes in benefits under title XVIII of such Act made by the amendments made by this Act.

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[*Internal References.*—S.S. Act §1882(m) and (n) cites the Medicare Catastrophic Coverage Repeal Act of 1989 and S.S. Act title XVIII and §§1804, 1812, 1813, and 1876 catchlines and §§1813(a), 1817A, 1833(c), 1834(c), 1876(i), and 1886(b) have footnotes referring to P.L. 101-234.]

P.L. 101-239, Approved December 19, 1989 (103 Stat. 2106)
Omnibus Budget Reconciliation Act of 1989

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SEC. 6001. [2 U.S.C. 902 note] EXTENSION OF REDUCTIONS UNDER ORIGINAL SEQUESTER ORDER AND APPLICABILITY OF NEW SEQUESTER ORDER.

Notwithstanding any other provision of law (including section 11002 or any other provision of this Act, other than section 6201), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through December 31, 1989, with respect to payments for items and services under part A of such title (including payments under section 1886 of such title attributable or allocated to such part). Each such payment made for items and services provided during fiscal year 1990 after such date shall be increased by 1.42 percent above what it would otherwise be under this Act.

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SEC. 6003. PROSPECTIVE PAYMENT HOSPITALS.

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(h) GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

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(5) [42 U.S.C. 1395ww note] ADDITIONAL PAYMENT RESULTING FROM CORRECTIONS OF ERRONEOUSLY DETERMINED WAGE INDEX.—

(A) IN GENERAL.—If the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") discovers an error with respect to the determination, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(3)(E) of the Social Security Act; and

(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.

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(i) [42 U.S.C. 1395ww note] LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (hereinafter referred to as the "Secretary") shall design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) classified as being located in large urban, other urban, or rural areas under section 1886(d)(2)(D) of such Act, and shall include in such proposal the following:

(A) A transition period beginning in fiscal year 1992 during which a single rate for determining payment to hospitals in all areas shall be phased in with such single rate to be completely in effect by fiscal year 1995.

(B) Recommendations, where appropriate, for modifying or maintaining additional payments or adjustments made under title XVIII of the Social Security Act for teaching hospitals, rural referral centers, sole community hospitals, disproportionate share hospitals, and outlier cases, and for creating additional payments or adjustments where deemed appropriate by the Secretary.

(C) Recommendations with respect to recalculating standardized amounts to reflect information from more recent cost reporting periods.

(D) Recommendations, where appropriate, for modifying reimbursement for hospitals that are not subsection (d) hospitals under title XVIII of such Act.

(E) A recommendation for a methodology to reflect the severity of illness of different patients within the same diagnosis-related group (as determined in section 1886(d)(4)(B) of such Act).

(2) Report to congress and propac.—(A) Not later than October 1, 1990, the Secretary shall submit the proposal described in paragraph (1) and an accompanying analysis of the impact of the proposed elimination of separate average standardized amounts on various categories of hospitals to Congress and the Prospective Payment Assessment Commission.

(B) Not later than February 1, 1991, the Prospective Payment Assessment Commission and the Director of the Congressional Budget Office shall each prepare and submit to Congress a report analyzing the legislative proposal submitted under subparagraph (A), and shall include in such report an analysis of the probable impact of such legislation on hospitals participating in the medicare program.

(j) [None assigned.] PROPAC Study of Payments to Rural Sole Community Hospitals and Small Rural Hospitals.—

(1) Study.—The Prospective Payment Assessment Commission (hereinafter referred to as the "Commission") shall conduct a study of the feasibility and desirability of—

(A) using a cost-based reimbursement system to determine the amount of payments to be made under the medicare program to small rural hospitals and rural sole community hospitals for the operating costs of inpatient hospital services;

(B) developing and applying alternative definitions of market share for use in determining the eligibility of hospitals for classification as sole community hospitals under section 1886(d)(5) of the Social Security Act; and

(C) developing and applying a method for accounting for decreases in the number of inpatients served in determining payment to small rural hospitals under section 1886(d) of the Social Security Act for the operating costs of inpatient hospital services.

(2) Report.—By not later than May 1, 1990, the Commission shall submit a report to Congress on the study conducted under paragraph (1).

Sec. 6004. PPS-EXEMPT HOSPITALS.

(a) Exemption of Cancer Hospitals From Prospective Payment System.—

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(3) [42 U.S.C. 1395ww note] Effective date.—The amendments made by this subsection shall apply with respect to cost reporting periods beginning on or after October 1, 1989, except that—

(A) in the case of a hospital classified by the Secretary of Health and Human Services as a hospital involved extensively in treatment for or research on cancer under section 1886(d)(5)(I) of the Social Security Act (as redesignated by section 6003(e)(1)(A)) after the date of the enactment of this Act, such amendments shall apply with respect to cost reporting periods beginning on or after the date of such classification,

(B) in the case of a hospital that is not described in subparagraph (A), such amendments shall apply with respect to portions of cost reporting periods or discharges occurring during and after fiscal year 1987 for purposes of section 1886(g) of the Social Security Act, and

(C) such amendments shall take effect 30 days after the date of the enactment of this Act for purposes of determining the eligibility of a hospital to receive periodic interim payments under section 1815(e)(2) of the Social Security Act.

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Sec. 6011. PASS THROUGH PAYMENT FOR HEMOPHILIA INPATIENTS.

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(b) [42 U.S.C. 1395ww note] DETERMINING PAYMENT AMOUNT.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

(c) [42 U.S.C. 1395ww note] RECOMMENDATIONS ON PAYMENTS.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act.

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SEC. 6014. [None assigned.] PROPAC STUDY ON MEDICARE-DEPENDENT HOSPITALS.

(a) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of the appropriateness of making an adjustment to the methodology for determining the amount of payment to hospitals for which individuals entitled to benefits under part A of title XVIII of the Social Security Act represent a high proportion of discharges.

(b) REPORT.—Not later than June 1, 1990, the Commission shall include a report on the study conducted under subsection (a) in its annual report submitted to Congress.

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SEC. 6016. [42 U.S.C. 1395f note] STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE.

(a) STUDY.—The Secretary of Health and Human Services shall—

(1) conduct a study of high-cost hospice care provided to medicare beneficiaries under the medicare program, and evaluate the ability of hospice programs participating in the medicare program to provide such high-cost care to such patients; and

(2) based on such study, develop methods to compensate such programs for providing such high-cost care.

(b) REPORT TO CONGRESS.—Not later than April 1, 1991, the Secretary shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a) and shall include in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to medicare beneficiaries.

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SEC. 6024. [42 U.S.C. 1395yy note] USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES.

The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act for cost reporting periods beginning on or after October 1,, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.[1]

SEC. 6025. [42 U.S.C. 1395x note] PERMITTING DENTIST TO SERVE AS HOSPITAL MEDICAL DIRECTOR.

Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital.

SEC. 6026. [None assigned.] GAO STUDY OF HOSPITAL-BASED AND FREESTANDING SKILLED NURSING FACILITIES.

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[1] P.L. 101-508, §4008(e)(1), added this sentence.

(a) Study.—The Comptroller General shall conduct a study to assess the differences in costs and case-mix between hospital-based and freestanding skilled nursing facilities participating in the medicare program.

(b) Report.—By not later than June 1, 1990, the Comptroller General shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study conducted under paragraph (1) and shall include in the report any recommendations, including recommendations regarding the payment differential between hospital-based and freestanding skilled nursing facilities, the Comptroller General considers appropriate.

Sec. 6027. [None assigned.] MASSACHUSETTS MEDICARE REPAYMENT.

The Secretary of Health and Human Services may not, on or after the date of the enactment of this Act and before May 1, 1990, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the statewide hospital reimbursement demonstration project conducted in that State between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972. Interest shall not accrue on any such alleged overpayments during the period beginning on the date of the enactment of this Act and ending on May 1, 1990.

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Sec. 6101. [2 U.S.C. 902 note] EXTENSION OF REDUCTIONS UNDER SEQUESTER ORDER.

Notwithstanding any other provision of law (including any other provision of this Act, other than section 6201), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through March 31, 1990, with respect to payments for items and services under part B of such title.

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Sec. 6102. PHYSICIAN PAYMENT REFORM.

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(d) [42 U.S.C. 1395w-4 note] Studies.—

(1) GAO study of alternative payment methodology for malpractice component.—The Comptroller General shall provide for—

(A) a study of alternative ways of paying, under section 1848 of the Social Security Act, for the malpractice component for physicians' services, in a manner that would assure, to the extent practicable, payment for medicare's share of malpractice insurance premiums, and

(B) a study to examine alternative resolution procedures for malpractice claims respecting professional services furnished under the medicare program.

The examination under subparagraph (B) shall include review of the feasibility of establishing procedures that involve no-fault payment or that involve mandatory arbitration. By not later than April 1, 1991, the Comptroller General shall submit a report to Congress on the results of the studies.

(2) Study of payments to risk-contracting plans.—The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall conduct a study of how payments under section 1848 of the Social Security Act may affect payments to eligible organizations with risk-sharing contracts under section 1876 of such Act. By not later than April 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations for such changes in the methodology for payment under such risk-sharing contracts as the Secretary deems appropriate.

(3) Study of volume performance standard rates of increase by geography, specialty, and type of service.—The Secretary shall conduct a study of the feasibility of establishing, under section 1848(f) of the Social Security Act, separate performance standard rates of increase for services furnished by or within each of the following (including combinations of the following):

(A) Geographic area (such as a region, State, or other area).

(B) Specialty or group of specialties of physicians.

(C) Type of services (such as primary care, services of hospital-based physicians, and other inpatient services).

Such study shall also include the scope of services included within, or excluded from, the rate of increase in expenditure system. By not later than July 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations respecting the feasibility of establishing separate performance standard rates of increase in expenditures as the Secretary deems appropriate.

(4) HHS VISIT CODE MODIFICATION STUDY.—The Secretary shall conduct a study of the desirability of including time as a factor in establishing visit codes. By not later than July 1, 1991, the Secretary shall consult with the Physician Payment Review Commission, and submit a report to Congress on such study and shall include in the report recommendations respecting the desirability of modifying the number of visit codes, whether greater coding uniformity would result from including time in visit codes when compared with clarifying the clinical descriptions of existing codes, and the ability to audit physician time accurately.

(5) COMMISSION STUDY OF PAYMENT FOR PRACTICE EXPENSES.—The Physician Payment Review Commission shall conduct a study of—

(A) the extent to which practice costs and malpractice costs vary by geographic locality (including region, State, Metropolitan Statistical Areas, or other areas and by specialty),

(B) the extent to which available geographic practice-cost indices accurately reflect practice costs and malpractice costs in rural areas,

(C) which geographic units would be most appropriate to use in measuring and adjusting practice costs and malpractice costs,

(D) appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for particular procedures using a consensus panel and other appropriate methodologies,

(E) the effect of alternative methods of allocating malpractice expenses on medicare expenditures by specialty, type of service, and by geographic area, and

(F) the special circumstances of rural independent laboratories in determining the geographic cost-of-practice index.

By not later than July 1, 1991, the Commission shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study and shall include in the report such recommendations as it deems appropriate.

(6) COMMISSION STUDY OF GEOGRAPHIC PAYMENT AREAS.—The Physician Payment Review Commission shall conduct a study of the feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under part B of title XVIII of the Social Security Act. By not later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include in the report recommendations on the desirability of retaining current carrier-wide localities, changing to a system of statewide localities, or adopting Metropolitan Statistical Areas or other payment areas for purposes of payment under such part B.

(7) COMMISSION STUDY OF PAYMENT FOR NON-PHYSICIAN PROVIDERS OF MEDICARE SERVICES.—The Physician Payment Review Commission shall conduct a study of the implications of a resource-based fee schedule for physicians' services for non-physician practitioners, such as physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under the medicare program on a fee-for-service basis. The study shall address (A) what the proper level of payment should be for these practitioners, (B) whether or not adjustments to their payments should be subject to the medicare volume performance standard process, and (C) what update to use for services outside the medicare volume performance standard process. The Commission shall submit a report to Congress on such study by not later than July 1, 1991.

(8) COMMISSION STUDY OF PHYSICIAN FEES UNDER MEDICAID.—The Physician Payment Review Commission shall conduct a study on physician fees under State medicaid programs established under title XIX of the Social Security Act. The Commission shall specifically examine in such study the adequacy of physician reimbursement under such programs, physician participation in such programs, and access to care by medicaid beneficiaries. By no later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include such recommendations as the Commission deems appropriate.

(9) GAO STUDY ON PHYSICIAN ANTI-TRUST ISSUES.—The Comptroller General shall conduct a study of the effect of anti-trust laws on the ability of physicians to act in

groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization. The study shall further address anti-trust issues as they relate to the adoption of practice guidelines by third-party payers and the role that practice guidelines might play as a defense in malpractice cases. By no later than July 1, 1991, the Comptroller General shall submit a report to Congress on such study and shall make such recommendations as the Comptroller General deems appropriate.

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SEC. 6103. ESTABLISHMENT OF AGENCY FOR HEALTH CARE POLICY AND RESEARCH.

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(b) OUTCOMES OF HEALTH CARE SERVICES AND PROCEDURES.—

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(2) [42 U.S.C. 1320b-12 note] REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH RELATED DATA.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act (as added by paragraph (1) of this subsection) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).

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SEC. 6105. REDUCTION IN PAYMENTS FOR RADIOLOGY SERVICES.

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(b) [42 U.S.C. 1395m note] SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS.—In applying section 1834(b) of the Social Security Act with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social Security Act beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 1/3 on the fee schedule computed under such section (without regard to this subsection) and 2/3 on 101 percent of the 1988 prevailing charge for such services.[2]

(c) [42 U.S.C. 1395m note] INTERVENTIONAL RADIOLOGISTS.—In applying section 1834(b) of the Social Security Act to radiologist services furnished in 1990 or 1991[3], the exception for "split billing" set forth at section 5262J of the Medicare Carriers Manual shall apply to services furnished in 1990 or 1991[4] in the same manner and to the same extent as the exception applied to services furnished in 1989.

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SEC. 6107. DELAY IN UPDATE AND REDUCTION IN PERCENTAGE INCREASE IN THE MEDICARE ECONOMIC INDEX.

(a) [42 U.S.C. 1395u note] DELAYING UPDATES UNTIL APRIL 1.—

(1) IN GENERAL.—Subject to the amendments made by this section, any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act which would

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[2] P.L. 101-508, §4102(g)(1), struck out "—

(1) during 1990, after April 1, 1990, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 1/3 on the fee schedule computed under such section (without regard to this subsection) and 2/3 on 101 percent of the 1988 prevailing charge for such services; and

(2) during 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 2/3 on the fee schedule computed under such section (without regard to this subsection) and 1/3 on 101 percent of the 1988 prevailing charge for such services." and substituted "beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based 1/3 on the fee schedule computed under such section (without regard to this subsection) and 2/3 on 101 percent of the 1988 prevailing charge for such services."

[3] P.L. 101-508, §4102(h), inserted "or 1991".

[4] P.L. 101-508, §4102(h), inserted "or 1991".

otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

(2) ITEMS AND SERVICES COVERED.—The items and services described in this paragraph are items and services (other than ambulance services and clinical diagnostic laboratory services) for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

(3) EXTENSION OF PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall remain in effect for the 3-month period beginning on January 1, 1990;

(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;

(C) instead of publishing, under section 1842(h)(4) of the Social Security Act, at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1990, of such directories of participating physicians and suppliers for such period; and

(D) instead of providing to nonparticipating physicians under section 1842(b)(3)(G) of the Social Security Act at the beginning of 1990, a list of maximum allowable actual charges for 1990, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1990, such physicians such a list for such 9-month period.

An agreement with a participating physician or supplier described in subparagraph (A) in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician or supplier requests on or before December 31, 1989, that the agreement be terminated.

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SEC. 6109. [42 U.S.C. 1395gg note] WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES.

In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier's establishing statewide fees for certain procedure codes while the carrier was in the process of implementing the national common procedure coding system of the Health Care Financing Administration, the provisions of section 1870(c) of the Social Security Act shall apply, without the need for affirmative action by such a physician or individual, so as to prevent any recoupment, or other decrease in subsequent payments, to the physician or individual. The previous sentence shall apply to claims for items and services which were reopened by carriers on or after July 31, 1987.

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SEC. 6112. DURABLE MEDICAL EQUIPMENT.

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(b) [42 U.S.C. 1395m note] RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump.

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SEC. 6113. MENTAL HEALTH SERVICES.

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(c) [42 U.S.C. 1395l note] DEVELOPMENT OF CRITERIA REGARDING CONSULTATION WITH A PHYSICIAN.—The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services for which payment may be made directly to the psychologist under part B of title XVIII of the Social Security Act under which such a psychologist must agree to consult with a patient's attending physician in accordance with such criteria.

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(e) [42 U.S.C. 1395l note] EFFECTIVE DATE.—The amendments made by this section, and the provisions of subsection (c), shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) shall apply to expenses incurred in a year beginning with 1990.

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SEC. 6134. [42 U.S.C. 1395m note] STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES.

The Secretary of Health and Human Services shall conduct a study of the costs of furnishing, and payments for, portable x-ray services under part B of title XVIII of the Social Security Act. Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to Congress on the results of such study and shall include a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

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SEC. 6136. [42 U.S.C. 1395l note] STUDY OF REIMBURSEMENT FOR AMBULANCE SERVICES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine the adequacy and appropriateness of payment amounts under title XVIII of the Social Security Act for ambulance services. Such study shall examine at least the following:

(1) The effect of payment amounts on the provision of ambulance services in rural areas.

(2) The relationship of such payment amounts to the direct and indirect costs of providing ambulance services. Such relationship shall be examined separately—

(A)(i) for tax-subsidized, municipally-owned and operated services, (ii) for volunteer services, (iii) for private, for-profit services, and (iv) for hospital-owned services, and

(B) for different levels (such as basic life support and advanced life support) of such services.

(3) How such payment amounts compare to the payment amounts made for ambulance services under medicaid plans under title XIX of such Act.

(b) REPORT.—By not later than one year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the results of the study conducted under subsection (a) and shall include in the report such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

SEC. 6137. [42 U.S.C. 1395l note] PROPAC STUDY OF PAYMENTS FOR SERVICES IN HOSPITAL OUTPATIENT DEPARTMENTS.

(a) IN GENERAL.—The Prospective Payment Assessment Commission shall conduct a study on payment under title XVIII of the Social Security Act for hospital outpatient services. Such study shall include an examination of—

(1) the sources of growth in spending for hospital outpatient services;

(2) the differences between the costs of delivering services in a hospital outpatient department as opposed to providing similar services in other appropriate settings (including ambulatory surgery centers and physician offices);

(3) the effects on outpatient hospital costs of the step-down method used to allocate hospital capital between inpatient and outpatient departments and the extent to which hospital outpatient costs were affected by the implementation of the prospective payment system of payment for inpatient hospital services and by increased review of such services by peer review organizations; and

(4) alternative methods for reimbursing hospitals for services in outpatient departments under the medicare program, including prospective payment methods, fee schedules, and such other methods as the Commission may consider appropriate.

(b) Reports.—(1) By not later than July 1, 1990, the Commission shall submit a report to Congress on the study conducted under subsection (a) with respect to the portions of the study described in paragraphs (1), (2), and (3) of such subsection, and shall include in the report such recommendations as the Commission deems appropriate.

(2) By not later than March 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a) with respect to the portion of the study described in paragraph (4) of such subsection, and shall include in the report such recommendations as the Commission deems appropriate.

Sec. 6138. [42 U.S.C. 1395w-1 note] PHYSPRC STUDY OF PAYMENTS FOR ASSISTANTS AT SURGERY.

(a) Study; Contents.—The Physician Payment Review Commission shall conduct a study of the payments made under title XVIII of the Social Security Act for assistants at surgery. Such study shall examine—

(1) the necessity and appropriateness of using an assistant at surgery;

(2) the use of physician and non-physician assistants at surgery;

(3) the appropriateness of providing for payments, and the appropriate level of payment, under title XVIII of the Social Security Act for assistants at surgery; and

(4) the effect of the amendments made by section 9338 of the Omnibus Budget Reconciliation Act of 1986 on the employment of registered nurses as assistants at surgery, and whether or not the reductions described in subsection (d) of such section have been implemented.

(b) Report.—By not later than April 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a), and shall include in the report such recommendations as it deems appropriate.

Sec. 6139. [42 U.S.C. 1395m note] GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.

(a) Study.—The Comptroller General shall conduct a study of the appropriate uses of items of durable medical equipment and of the appropriate criteria for making determinations of medical necessity under title XVIII of the Social Security Act for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices. Such study shall include an analysis of—

(1) the appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title; and

(2) procedures for identifying items of durable medical equipment that should no longer be covered under such title.

(b) Use of Panel in Conducting Study.—The Comptroller General shall conduct such study with a panel convened by the Comptroller General consisting of—

(1) specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine;

(2) representatives of consumer organizations; and

(3) representatives of carriers under the medicare program.

(c) Report.—Not later than April 1, 1991, the Comptroller General shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a), and shall include in such report such recommendations as the Comptroller General deems appropriate.

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Sec. 6142. [None assigned.] STUDY OF REIMBURSEMENT FOR BLOOD CLOTTING FACTOR FOR HEMOPHILIA PATIENTS.

The Secretary of Health and Human Services shall review the current methodology for reimbursing for blood clotting factor for hemophilia patients under part B of title XVIII of the Social Security Act and shall evaluate the effect of such methodology on the accessibility and affordability of such factor to medicare beneficiaries. By not later than 6 months after the date of the enactment of this Act, the Secretary shall report to the Committees on Energy and Commerce and Ways and Means of the House of

Representatives and the Committee on Finance of the Senate on such review and shall include in such report such recommendations as the Secretary deems appropriate.

SEC. 6201. [2 U.S.C. 902 note] REDUCTIONS UNDER ORIGINAL SEQUESTER ORDER AND APPLICABILITY OF NEW SEQUESTER ORDER FOR HEALTH MAINTENANCE ORGANIZATIONS.

Notwithstanding any other provision of law (including section 11002 or any other provision of this Act), the reductions in the amount of payments required under title XVIII of the Social Security Act made by the final sequester order issued by the President on October 16, 1989, pursuant to section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall continue to be effective (as provided by sections 252(a)(4)(B) and 256(d)(2) of such Act) through December 31, 1989, with respect to payments under section 1833(a)(1)(A) or 1876 of the Social Security Act, section 402 of the Social Security Amendments of 1967, or section 222 of the Social Security Amendments of 1972. Each such payment made during fiscal year 1990 after such date shall be increased by 1.42 percent above what it would otherwise be under this Act.

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SEC. 6204. PHYSICIAN OWNERSHIP OF, AND REFERRAL TO, HEALTH CARE ENTITIES.

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(e) [42 U.S.C. 1395nn note] GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS.—The Comptroller General shall conduct a study of the ownership of hospitals and other providers of medicare services by referring physicians. Such study shall investigate—

(1) the types of such ownership arrangements and types of services offered under such arrangements,

(2) the returns generally earned by physician investors in such arrangements,

(3) the effect of such arrangements on (A) the utilization of items and services by medicare beneficiaries, (B) medicare expenditures, and (C) other entities providing items and services in the communities served,

(4) the effect of such arrangements on independent providers of similar services, and

(5) the effect on the provision of in-office clinical laboratory services of the limitation on payment for certain referrals contained in section 1877 of the Social Security Act.

By not later than February 1, 1991, the Comptroller General shall report to Congress on the results of such study.

(f) [42 U.S.C. 1395nn note] STATISTICAL SUMMARY OF COMPARATIVE UTLIZATION.—Not later than June 30, 1992, the Secretary of Health and Human Services shall submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the State and entities specified in section 1877(f) of the Social Security Act (other than entities providing clinical laboratory services).[5]

SEC. 6205. COSTS OF NURSING AND ALLIED HEALTH EDUCATION.

(a) RECOGNITION OF COSTS OF CERTAIN HOSPITAL-BASED NURSING SCHOOLS.—

(1) IN GENERAL.—(A) [42 U.S.C. 1395x note] The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be allowable as reasonable costs under title XVIII of the Social Security Act and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital.

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(2) [42 U.S.C. 1395x note] EFFECTIVE DATE.—Paragraph (1)(A) shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A).

(b) [42 U.S.C. 1395ww note] DELAY IN RECOUPMENT OF CERTAIN NURSING AND ALLIED EDUCATION COSTS.—

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[5] P.L. 101-508, §4027(sic)(e)(4)(A), amended subsection (f) in its entirety.

(1) The Secretary of Health and Human Services (in this subsection referred to as the "Secretary") shall not, before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of "operating costs of inpatient hospital services" pursuant to section 1886(a)(4) of such Act, so that no pass-through of such costs was permitted under that section.

(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

(B) In issuing such regulations—

(i) the Secretary shall allow a comment period of not less than 60 days,

(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

(C) Such regulations shall specify—

(i) the relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;

(ii) the types of costs related to nursing or allied health education programs that are allowable by medicare;

(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act and educational costs treated as operating costs of inpatient hospital services; and

(iv) the treatment of other funding sources for the program.

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SEC. 6213. RURAL HEALTH CLINIC SERVICES.

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(e) [42 U.S.C. 1395x note] DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION.—

(1) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services, in consultation with the Director of the Office of Rural Health Policy, shall disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of titles XVIII and XIX of the Social Security Act.

(2) DEFINITIONS.—For purposes of this subsection:

(A) The term "health care facility" means a community health center or a migrant health center, or a hospital, home health agency, or skilled nursing facility participating in a program established under title XVIII or title XIX of the Social Security Act.

(B) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

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SEC. 6217. [42 U.S.C. 1395ww note] INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT.

(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)[6] for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

(1) to train hospital personnel to operate and participate in the system; and

(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

(b) LIMITATIONS ON PAYMENT.—(1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

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[6] P.L. 101-508, §4027(sic)(k)(5), inserted "out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year)".

(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.

Sec. 6218. [None assigned.] GAO STUDY OF ADMINISTRATIVE COSTS OF MEDICARE PROGRAM.

(a) Study.—The Comptroller General shall conduct a study of the administrative burden of medicare regulations and program requirements on providers of services, fiscal intermediaries, and carriers, and shall include in such study—

(1) an assessment of current administrative costs to such entities and of trends in such administrative costs since 1982; and

(2) a comparison of the administrative burden to such entities in providing services to individuals who are not medicare beneficiaries.

For purposes of such assessment, administrative costs shall include personnel costs, training costs, the costs of data and communications systems as affected by changes in requirements of the medicare program, and costs to such entities of non-compliance with such requirements resulting from the failure of the Secretary of Health and Human Services to provide entities with adequate notice of changes in program requirements.

(b) Report.—Not later than March 31, 1990, the Comptroller General shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study conducted under subsection (a).

Sec. 6219. PROVISIONS RELATING TO END STAGE RENAL DISEASE SERVICES.

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(c) [None assigned.] Report on Payment for Erythropoietin (EPO).—Not later than April 1, 1990, the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate and to the Comptroller General on the methodology and rationale used to establish a payment rate for the drug erythropoietin (EPO) under title XVIII of the Social Security Act and shall include in the report (1) a summary of information provided to the Secretary by the manufacturer of EPO and used by the Secretary to establish such rate and (2) a plan for ensuring the appropriateness of such rate in the future.

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Sec. 6222. [42 U.S.C. 1395x note] CONTINUED USE OF HOME HEALTH WAGE INDEX IN EFFECT PRIOR TO JULY 1, 1989, UNTIL AFTER JULY 1, 1991.

Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of the Social Security Act with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991.

Sec. 6223. [None assigned.] HCFA PERSONNEL STUDY.

(a) In General.—The Secretary of Health and Human Services shall (subject to subsection (c)) enter into an agreement with the National Academy of Public Administration (hereafter in this section referred to as the "Academy") to—

(1) study personnel administration at the Health Care Financing Administration (hereafter in this section referred to as "HCFA");

(2) assess the adequacy of HCFA staffing; and

(3) recommend any needed changes with respect to HCFA staffing to the Secretary of Health and Human Services and the Congress.

(b) Requirements of Study.—In conducting the study, the Academy shall interview management officials at HCFA and other appropriate agencies. The study shall include consideration of—

(1) the average years in service, years to retirement and average age of various categories of HCFA personnel;

(2) the adequacy of HCFA practices to recruit personnel to replace persons who retire or resign and train new employees in the intricacies of HCFA programs;

(3) the grade structure of various categories of HCFA personnel, and the need for additional nonsupervisory positions at the GS-13, GS-14, and GS-15 levels for particularly skilled and expert personnel needed for HCFA to carry out its missions;

(4) the grade structure at HCFA with Federal agencies of similar size and responsibilities;

(5) whether bonus payments or other incentives are needed for HCFA to recruit and retain specialized personnel;

(6) particular problems in hiring personnel that may prevent recruitment and retention of qualified staff;

(7) Office of Personnel Management rules that may be burdensome to the hiring process; and

(8) how HCFA can more appropriately address the priorities of both Congress and the executive branch of Government.

(c) ARRANGEMENTS FOR STUDY.—The Secretary shall request the Academy, acting through appropriate units, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) DATE OF REPORT.—The results of the study shall be reported to Congress and the Secretary of Health and Human Services no later than December 31, 1990.

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SEC. 6401. MANDATORY COVERAGE OF CERTAIN LOW-INCOME PREGNANT WOMEN AND CHILDREN.

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(c) [42 U.S.C. 1396a note] EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 6402. PAYMENT FOR OBSTETRICAL AND PEDIATRIC SERVICES.

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(d) [42 U.S.C. 1396a note] EFFECTIVE DATE.—

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(2)(A) The amendments made by subsection (c) apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (c), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

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SEC. 6404. PAYMENT FOR FEDERALLY-QUALIFIED HEALTH CENTER SERVICES.

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(d) [42 U.S.C. 1396a note] Effective Date.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

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Sec. 6407. [42 U.S.C. 1396r-7 note] DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID TO PREGNANT WOMEN AND CHILDREN NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) In General.—In order to allow States to develop and carry out innovative programs to extend health insurance coverage to pregnant women and children under age 20 who lack insurance and to encourage workers to obtain health insurance for themselves and their children, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into agreements with several States submitting applications in accordance with subsection (b) for the purpose of conducting demonstration projects to study the effect on access to health care, private insurance coverage, and costs of health care when such States are allowed to extend benefits under title XIX of the Social Security Act, either directly, in the same manner, or otherwise as alternative assistance authorized in section 1925(b)(4)(D) of such Act, to pregnant women and children under 20 years of age who are not otherwise qualified to receive benefits under such section.

(b) Project Requirements.—(1) Each State applying to participate in the demonstration project under subsection (a) shall assure the Secretary that eligibility shall be limited to pregnant women and children who have not attained 20 years of age who are in families with income below 185 percent of the income official poverty line (referred to in subsection (c)(1)).

(2) The Secretary shall further provide in conducting demonstration projects under this section that, if one or more of such demonstration projects utilizes employer coverage as allowed under section 1925(b)(4)(D) of the Social Security Act, such project shall require an employer contribution.

(c) Premiums.—In the case of pregnant women and children eligible to participate in such demonstration projects whose family income level is—

(1) below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, there shall be no premium charged; and

(2) between 100 and 185 percent of such income official poverty line, there shall be a premium equal to—

(A) an amount based on a sliding scale relating to income, or

(B) 3 percent of the family's average gross monthly earnings,

whichever is less.

(d) Duration.—Each demonstration project under this section shall be conducted for a period not to exceed 3 years.

(e) Waiver.—The Secretary where he deems appropriate may waive the statewideness requirement described in section 1902(a)(1) of the Social Security Act.

(f) Limit on Expenditures.—The Secretary in conducting the demonstration projects described in this section shall limit the amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to $10,000,000 in each of fiscal years 1990, 1991, and 1992.

(g) Evaluation and Report.—(1) For each demonstration project conducted under this section, the Secretary shall assure that an evaluation is conducted on the effect of the project with respect to—

(A) access to health care;

(B) private health care insurance coverage;

(C) costs with respect to health care; and

(D) developing feasible premium and cost-sharing policies.

(2) The Secretary shall submit to Congress an interim report containing a summary of the evaluations conducted under paragraph (1) not later than January 1, 1992, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1994.

Sec. 6408. OTHER MEDICAID PROVISIONS.

(a) [None assigned.] Institutions for Mental Diseases.—

(1) Study.—The Secretary of Health and Human Services shall conduct a study of—

(A) the implementation, under current provisions, regulations, guidelines, and regulatory practices under title XIX of the Social Security Act, of the exclusion of coverage of services to certain individuals residing in institutions for mental diseases, and

(B) the costs and benefits of providing services under title XIX of the Social Security Act in public subacute psychiatric facilities which provide services to psychiatric patients who would otherwise require acute hospitalization.

(2) Report.—By not later than October 1, 1990, the Secretary shall submit a report to Congress on the study and shall include in the report recommendations respecting—

(A) modifications in such provisions, regulations, guidelines, and practices, if any, that may be appropriate to accommodate changes that may have occurred since 1972 in the delivery of psychiatric and other mental health services on an inpatient basis to such individuals, and

(B) the continued coverage of services provided in subacute psychiatric facilities under title XIX of the Social Security Act.

(3) Moratorium on treatment of certain facilities.—Any determination by the Secretary that Kent Community Hospital Complex in Michigan or Saginaw Community Hospital in Michigan is an institution for mental diseases, for purposes of title XIX of the Social Security Act shall not take effect until 180 days after the date the Congress receives the report required under paragraph (2).

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(d) Medicare Buy-in for Premiums of Certain Working Disabled.—

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(5) [42 U.S.C. 1396a note] Effective date.—

(A) The amendments made by this subsection apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Sec. 6411. MISCELLANEOUS MEDICAID TECHNICAL AMENDMENTS.

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(g) [42 U.S.C. 1396b note] Day Habilitation and Related Services.—

(1) Prohibition of disallowance pending issuance of regulations.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

(B) withdraw Federal approval of any such State plan provision.

(2) Requirements for regulation.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rule-making and a period of at least 60 days for public comment, that—

(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act on behalf of persons with mental retardation or with related conditions, and

(B) any requirements respecting such coverage.

(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.

(h) [None assigned.] MORATORIUM ON ISSUANCE OF FINAL REGULATION ON MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.—The Secretary of Health and Human Services may not issue in final form, before December 31, 1990, any regulation implementing the proposed regulation published on September 26, 1989 (54 Federal Register 39421) insofar as such regulation changes the method for establishing the medically needy income level for single individuals in any State (including the proposed change to section 435.1007(a)(1) of title 42, Code of Federal Regulations).

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SEC. 6506. DEVELOPMENT OF MODEL APPLICATIONS.

(a) [42 U.S.C. 701 note] FOR MATERNAL AND CHILD ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall develop, by not later than one year after the date of the enactment of this Act and in consultation with the Secretary of Agriculture, a model application form for use in applying, simultaneously, for assistance for a pregnant woman or a child less than 6 years of age under maternal and child assistance programs (as defined in paragraph (3)). In developing such form, the Secretary is not authorized to change any requirement with respect to eligibility under any maternal and child assistance program.

(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1) and shall send a copy of such form to each State agency responsible for administering a maternal and child assistance program.

(3) MATERNAL AND CHILD ASSISTANCE PROGRAM DEFINED.—In this subsection, the term "maternal and child assistance program" means any of the following programs:

(A) The maternal and child health services block grant program under title V of the Social Security Act.

(B) The medicaid program under title XIX of the Social Security Act.

(C) The migrant and community health centers programs under sections 329 and 330 of the Public Health Service Act.

(D) The grant program for the homeless under section 340 of the Public Health Service Act.

(E) The "WIC" program under section 17 of the Child Nutrition Act of 1966.

(F) The head start program under the Head Start Act.

(b) [42 U.S.C. 1396a note] FOR MEDICAID PROGRAM.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act, develop a model application form for use in applying for benefits under title XIX of the Social Security Act for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act, and who are not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State agency responsible for administering a State medicaid plan.

SEC. 6507. [42 U.S.C. 701 note] RESEARCH ON INFANT MORTALITY AND MEDICAID SERVICES.

The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

(1) the infant's birth record,

(2) any death record for the infant, and

(3) information on any claims submitted under title XIX of the Social Security Act for health care furnished to the infant or with respect to the birth of the infant.

SEC. 6508. [42 U.S.C. 701 note] DEMONSTRATION PROJECT ON HEALTH INSURANCE FOR MEDICALLY UNINSURABLE CHILDREN.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") may conduct not more than 4 demonstration projects to provide health insurance coverage (as defined by the Secretary) through an eligible plan (as defined in subsection (b)) to medically uninsurable children (as defined by the Secretary) under 19 years of age.

(b) ELIGIBILITY.—In this section, the term "eligible plan" means—

(1) a school-based plan;

(2) a plan operated under the direction of a not-for-profit entity offering health insurance; and

(3) a plan operated by a not-for-profit hospital.

(c) REQUIREMENTS.—A demonstration project conducted under subsection (a) may only be conducted under an agreement between the Secretary and an eligible plan which provides that—

(1) health insurance coverage will be made available under the project for at least 2 years, and, if the eligible plan fails to provide such coverage during such period, the Secretary will guarantee the provision of such coverage;

(2) non-Federal funds will be made available to fund the project at a level not less than—

(A) 50 percent in the first year of such agreement,

(B) 65 percent in the second year of such agreement, and

(C) 80 percent in the third or subsequent year of such agreement;

(3) the plan may not—

(A) restrict health insurance coverage on the basis of a child's medical condition, or

(B) impose waiting periods or exclusions for preexisting conditions;

(4) any premium imposed under the project shall be disclosed in advance of enrollment and shall be varied by the income of individuals; and

(5) with respect to a plan which at the time of entering into such agreement is conducting a project similar to the one described in this subsection such plan must maintain its current level of non-Federal funding at its current level unless such level is less than the applicable level described in paragraph (2).

(d) APPLICATION.—No funds may be made available by the Secretary under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this section.

(e) EVALUATION AND REPORT.—

(1) EVALUATION.—The Secretary shall provide for an evaluation of the effects of the demonstration projects conducted under subsection (a) on—

(A) access to health services by previously medically uninsurable children,

(B) the availability of insurance coverage to participating medically uninsurable children,

(C) the demographic characteristics and health status of participating medically uninsurable children and their families, and

(D) out-of-pocket health care costs for such families.

(2) REPORT.—The Secretary shall submit a report on the demonstration projects conducted under subsection (a) to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report a summary of the evaluation described in paragraph (1).

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000, for each of fiscal years 1991, 1992, and 1993.

SEC. 6509. [42 U.S.C. 701 note] MATERNAL AND CHILD HEALTH HANDBOOK.

(a) IN GENERAL.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1990, and shall complete field testing and evaluation by June 1, 1991.

(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V or title XIX of the Social Security Act, community and migrant health centers under sections 329 and 330 of the Public Health Service Act, the grant program for the homeless under section 340 of the Public Health Service Act, the "WIC" program under section 17 of the Child Nutrition Act of 1966, and the head start program under the Head Start Act) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section.

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SEC. 6901. MEDICARE AND MEDICAID TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

(a) [None assigned.] MORATORIUM ON IMPLEMENTATION OF FEBRUARY 2, 1989 REGULATION.—The regulations promulgated by the Secretary of Health and Human Services on February 2, 1989 (54 Federal Register 5315 et seq., relating to requirements for long-term care facilities) shall not be effective before October 1, 1990, insofar as such regulations apply to skilled nursing facilities and intermediate care facilities under title XVIII or XIX of the Social Security Act.

(b) NURSE AIDE TRAINING.—

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(4) DELAY AND TRANSITION IN 75-HOUR TRAINING PROGRAM REQUIREMENT.—

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(B) [42 U.S.C. 1395i-3 note] A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in sections 1819(f)(2) and 1919(f)(2) of such Act, respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

(C) A nurse aide shall be considered to satisfy the requirement of section 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act.

(5) CLARIFICATION OF TEMPORARY ENHANCED FEDERAL FINANCIAL PARTICIPATION FOR NURSE AIDE TRAINING BY NURSING FACILITIES.—

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(B) [42 U.S.C. 1396b note] NO ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990.—In making payments under section 1903(a)(2)(B) of the Social Security Act for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act, in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into account, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act.

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(d) Other Amendments.—

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(2) [42 U.S.C. 1396b note] Clarification of federal matching rate for survey and certification activities.—During the period before October 1, 1990, the Federal percentage matching payment rate under section 1903(a) of the Social Security Act for so much of the sums expended under a State plan under title XIX of such Act as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent.

(3) [None assigned.] Medicare waiver authority for certain demonstration projects.—(A) The Secretary of Health and Human Services may waive the survey and certification requirements of sections 1819(g) and 1864(a) of the Social Security Act to the extent the Secretary determines is required to carry out a demonstration project in New York (relating to testing an approved alternative survey and certification process), which has been approved as of the date of the enactment of this Act. Such waiver shall apply only during the period beginning on November 1, 1988, and ending on October 31, 1991.

(B) The Secretary also may waive the survey and certification requirements described in subparagraph (A) to the extent the Secretary determines is required to carry out a pilot demonstration project in Wisconsin and nursing home case-mix demonstration projects in other States[7] (relating to testing an approved alternative survey and certification process).[8]

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Sec. 8002. EXTENSION OF INDEPENDENT LIVING INITIATIVES PROGRAM.

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(d) [42 U.S.C. 677 note] Study by the Secretary of HHS; Report.—

(1) Study.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

(2) Report.—Upon completion of the study, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

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Sec. 8004. NEW AFDC QUALITY CONTROL SYSTEM.

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(d) [42 U.S.C. 603 note] No Sanctions with respect to Disallowances Before Fiscal Year 1991.—No disallowance or other similar sanction shall be applied to a State for any fiscal year before fiscal year 1991 under section 403(i) of the Social Security Act or any predecessor statutory or regulatory provision relating to disallowances for erroneous payments made in carrying out a State plan approved under part A of title IV of such Act.

(e) [42 U.S.C. 608 note] Implementation.—The Secretary of Health and Human Services shall take all actions necessary to assure that adequate numbers of staff are available to perform the functions required by the amendments made by this section.

(f) [42 U.S.C. 608 note] Annual Reports.—The Secretary of Health and Human Services shall annually submit to the Committee on Finance of the Senate, and to the Committee on Ways and Means of the House of Representatives a report on whether the time periods contained in the regulations prescribed pursuant to section 408 of the Social Security Act (as added by subsection (a)) have been or will be met. The first such report shall be submitted not later than January 1, 1992.

(g) [42 U.S.C. 608 note] Study of Negative Case Actions.—

(1) In general.—Not later than October 1, 1992, the Secretary of Health and Human Services shall report and make recommendations to the Congress on the results of a study of negative case actions under the program of aid to families

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[7] P.L. 101-508, §4008(i)(2)(A), struck out "Wisconsin" and substituted "Wisconsin and nursing home case-mix demonstration projects in other States".

[8] P.L. 101-508, §4008(i)(2)(B), struck out "Such waiver shall apply only during the one-year period beginning on the date of implementation of the project.".

with dependent children under State plans approved under part A of title IV of the Social Security Act.

(2) NEGATIVE CASE ACTIONS DEFINED.—As used in paragraph (1), the term "negative case actions" means termination of assistance under part A of title IV of the Social Security Act, denial of an application for assistance under such part, or other action with respect to an application under such part without a determination of eligibility for assistance under such part.

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SEC. 8005. [42 U.S.C. 606 note] EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS.

(a) IMPLEMENTATION OF PROPOSED REGULATIONS PROHIBITED.—Except as provided in subsection (b), the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall not—

(1) implement in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, (52 F.R. 47420) with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children; or

(2) before October 1, 1991[9], change any policy in effect immediately before the date of the enactment of this Act with respect to any of the matters addressed in the proposed regulation.

(b) REVISED PROPOSED REGULATION.—Notwithstanding subsection (a), the Secretary may issue a revised proposed regulation concerning the use of emergency assistance under the program of aid to families with dependent children under title IV of the Social Security Act that incorporates the recommendations included in the report entitled "Use of the Emergency Assistance and AFDC Programs to Provide Shelter to Families" that the Secretary submitted to the Congress on July 3, 1989.

(c) ESTABLISHMENT OF EFFECTIVE DATES FOR PROPOSED RULES.—Any final regulation which would change any policy in effect immediately before the date of the enactment of this Act with respect to the use of emergency assistance or special needs funds under the program of aid to families with dependent children under part A of title IV of the Social Security Act shall not take effect before October 1, 1991[10].

(d) REPORTING REQUIREMENTS.—With respect to any calendar quarter beginning on or after January 1, 1990, a financial report by a State submitted to the Secretary to fulfill reporting requirements under the program of aid to families with dependent children under part A of title IV of the Social Security Act shall identify any emergency assistance and special needs funds expended by the State under the program and used to pay for housing in hotels or similar temporary living arrangements (as defined by the Secretary) that house recipients of such aid.

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SEC. 8015. [42 U.S.C. 602 note] DEMONSTRATION OF EFFECTIVENESS OF MINNESOTA FAMILY INVESTMENT PLAN.

(a) IN GENERAL.—Upon written application of the State of Minnesota (in this section referred to as the "State") within 24 months after the date of the enactment of this Act, and after the Secretary of Health and Human Services approves the application as meeting the requirements set forth in subsection (b), the State may conduct a demonstration project to determine whether the State family investment plan helps families to become self-supporting and enhances the ability of families to care for their children more effectively than does the State program of aid to families with dependent children under parts A and F[11] of title IV of the Social Security Act.

(b) PROJECT REQUIREMENTS.—In an application submitted under subsection (a), the State shall provide that the following terms and conditions shall be in effect under the demonstration project:

(1) FIELD TRIALS.—The project will consist of 2 field trials, conducted as follows:

(A) URBAN FIELD TRIAL.—1 field trial will be conducted in 1 or more of the following counties in the State:

(i) Anoka.
(ii) Carver.
(iii) Dakota.
(iv) Hennepin.
(v) Scott.
(vi) Washington.

(B) RURAL FIELD TRIAL.—1 field trial will be conducted in 1 or more counties in the State not specified in subparagraph (A).

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[9] P.L.101-508, §5058, struck out "1990" and substituted "1991".

[10] P.L. 101-508, §5058, struck out "1990" and substituted "1991".

[11] P.L. 101-508, §5059(1), struck out "part A" and substituted "parts A and F".

(C) NUMBER OF FAMILIES INVOLVED.—The field trials will not involve more than a total of 6,000 families at any one time, excluding families whose sole involvement is as members of control groups needed to evaluate the project.

(2) AUTHORITY TO IMPLEMENT FIELD TRIALS DIFFERENTLY.—The implementation of the family investment plan in 1 field trial may be different from the implementation of such plan in the other field trial.

(3) WAIVERS REQUIRED BEFORE PROJECT BEGINS.—The project will not begin before all waivers required as described in subsection (d)[12] have been granted.

(4) BEGINNING OF PROJECT.—

(A) IN GENERAL.—The project will begin during the first month of a calendar quarter.

(B) BEGIN DEFINED.—For purposes of this section, the project begins when the first family receives assistance under the project.

(5) PROJECT TO BE OPERATED IN ACCORDANCE WITH CERTAIN MINNESOTA LAWS.—The project will be operated in accordance with the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282, and all amendments to the Laws of Minnesota, to the extent that such laws and amendments are consistent with the goals of the project and this subsection.

(6) PROJECT PARTICIPANTS INELIGIBLE FOR AFDC.—Each family which participates in the project or that is assigned to and found eligible for the project[13] will not be eligible for aid under the State plan approved under section 402(a) of the Social Security Act.

(7) MEDICAID ELIGIBILITY RULES APPLICABLE TO PROJECT.—

(A) ELIGIBILITY OF PARTICIPANTS.—

(i) IN GENERAL.—Each family which participates in the project and would (but for such participation) be eligible for aid under the State plan approved under section 402(a) of the Social Security Act will be treated as receiving such aid for purposes of the State plan approved under section 1902(a) of such Act.

(ii) ELIGIBILITY EXTENDED FOR PROJECT PARTICIPANTS WITH INCREASED EMPLOYMENT INCOME.—Each family which participates in the project and, during such participation, would (but for such participation) become ineligible for aid under the State plan approved under section 402(a) of the Social Security Act by reason of increased income from employment will, for purposes of section 1925 of such Act, be treated as a family that has become ineligible for such aid.

(B) ELIGIBILITY EXTENDED FOR PERSONS LEAVING PROJECT BECAUSE OF INCREASED RECEIPT OF CHILD SUPPORT.—Each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act will be treated as a recipient of aid to families with dependent children for purposes of title XIX of such Act for an additional 4 calendar months beginning with the month in which the termination occurs.

(8) AFDC RULES TO APPLY GENERALLY.—

(A) IN GENERAL.—Except where inconsistent with this subsection, the requirements of the State plan approved under section 402(a) of the Social Security Act will apply to the project, unless waived by the Secretary of Health and Human Services in accordance with subsection (d).

(B) RULES RELATING TO PARTICIPATION IN EDUCATION, EMPLOYMENT, AND TRAINING ACTIVITIES.—

(i) PARTICIPATION GENERALLY NOT REQUIRED.—Except as provided in clause (ii), the State will not require any individual who applies for or receives assistance under the project to comply with any education, employment, or training requirement of title IV of the Social Security Act, unless required to do so under a contract entered into under the project.

(ii) AUTHORITY TO REQUIRE PARTICIPATION OF PARENT OF CHILD AGE 1 OR OLDER.—The State may require any individual to comply with any education, employment, or training requirement imposed under the project if the State plan approved under section 402(a) of the Social Security Act does not prohibit the State from requiring such compliance except that the age of the youngest child may be age 1 under the project even if the State plan specifies age 3)[14], and the individual—

(I) receives assistance under the project;and[15]

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[12] P.L. 101-508, §5059(2), struck out "(e)" and substituted "(d)".

[13] P.L. 101-508, §5059(3), inserted "or that is assigned to and found eligible for the project".

[14] P.L. 10-508, §5059(4), inserted "(except that the age of the youngest child may be age 1 under the project even if the State plan specified age 3)".

[15] P.L. 101-508, §5059(5), inserted "and".

(II) is the parent or relative of a child who has attained the age of 1 year;

(except that ina 2-parent family, this clause applies only to 1 parent).[16]

(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.[17]

(10) ASSISTANCE UNDER PROJECT NOT LESS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—

(A) ESTABLISHMENT OF POLICIES AND STANDARDS.—The State will establish policies and standards to ensure that, except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,[18] families participating in the project receive[19] assistance under the project in an amount not less than the aggregate value of the assistance that such families would have received under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 in the absence of the project.

(B) IDENTIFICATION OF CHARACTERISTICS OF PARTICIPANTS WHO MIGHT RECEIVE LESS BENEFITS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—The State will identify the set or sets of characteristics of families that (but for this paragraph) might receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

(C) DETERMINATION OF BENEFIT LEVEL FOR PARTICIPANTS WITH IDENTIFIED CHARACTERISTICS.—The State will establish a mechanism to determine, for each family with any set of characteristics identified under subparagraph (B), whether the family would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

(D) ASSISTANCE UNDER PROJECT INCREASED WHERE NECESSARY.—The State will, for each family which would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family, increase the amount of such benefits to such family to the amount so required.

(11) TERMINATION OF PROJECT.—The project will terminate at the end of the 5-year period beginning on the first day of the month during which the project begins, or, if earlier—

(A) 180 days after the State notifies the Secretary of Health and Human Services that the State intends to terminate the project;

(B) 180 days after the Secretary of Health and Human Services, after 30 days written notice to the State and opportunity for a hearing, determines that the State has materially failed to comply with this section; or

(C) on agreement by the State and the Secretary of Health and Human Services.

(12) LIABILITY FOR COSTS.—For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been liable for had the project not been implemented, except for costs for evaluating the project.[20]

(c) FUNDING.—

(1) IN GENERAL.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b) and contains an evaluation plan which meets the requirements of subsection (g), and the Secretary of Health and Human Services approves the application, then the Secretary shall, from amounts made available under parts A and F of title IV of the Social Security Act—

(A) pay the State for each calendar quarter, pursuant to section 403 of such Act, the amounts that would have been payable to the State during such calendar quarter, in the absence of the demonstration project, for cash assistance, child care, education, employment and training, and administrative expenses under the State plan approved under section 402(a) of such Act;

(B) reimburse the State at the rate of 25[21] percent, for expenses of evaluating the effects of the project.

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[16] P.L. 101-508, §5059(6), struck out "and and (III) is personally providing care for the child." and substituted "(except that, in a 2-parent family, this clause applies only to 1 parent)."

[17] P.L. 101-508, §5059(7), amended paragraph (9) in its entirety.

[18] P.L. 101-508, §5059(8)(A), inserted ", except when a sanction if implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,"

[19] P.L. 101-508, §5059(8)(B), staruck out "cash".

[20] P.L. 101-508, §5050(9), added paragraph (12).

[21] P.L. 101-508, §5059(10), struck out "50" and substituted "25".

(2) Rule of construction.—Paragraph (1) shall not be construed to prevent the State from claiming and receiving reimbursement for additional persons who would qualify for assistance under the State plan approved under section 402(a) of the Social Security Act, for costs attributable to increases in the State's payment standard under such plan, or for any other benefits and services for which Federal matching funds are available under parts A and F[22] of title IV of such Act.

(d) Waiver Authority.—

(1) AFDC waivers.—

(A) In general.—Except as provided in subparagraph (B), the Secretary of Health and Human Services shall, with respect to the demonstration project under this section, waive any requirement of part A or F of title IV of the Social Security Act that, if applied, would prevent the State from (i) carrying out the project in accordance with subsection (b), or (ii) effectively achieving its purposes, but only to the extent necessary to enable the State to carry out the project.

(B) Limitations.—The Secretary of Health and Human Services may not, with respect to the demonstration project under this section—

(i) waive any requirement of section 402(a)(4) or 482(h) of the Social Security Act;

(ii) except when a sanction if implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,[23] permit the State to provide[24] assistance to any family under the project in an amount less than the aggregate value of the assistance that would have been provided to such family under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 in the absence of the project; or

(iii) waive any requirement of subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan)[25].

(2) Other waivers.—If, under this section, the Secretary of Health and Human Services approves an application by the State to conduct a demonstration project relating to the State family investment plan, the Secretary of Health and Human Services shall, in order to enable the State to implement the demonstration project—

(A)(i) require that the State treat each family participating in the project as individuals eligible for medical assistance under section 1902(a)(10)(A) of the Social Security Act,

(ii) require that the State treat, for purposes of section 1925 of such Act, each family whose participation in the project is terminated by reason of increased income from employment as a family that has become ineligible for aid under the State plan approved under part A of title IV of such Act, and

(iii) require that the State treat each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act as a recipient of aid to families with dependent children for purposes of title XIX of such Act for an additional 4 calendar months beginning with the month in which such termination occurs; and

(B) make payment, under section 1903 of such Act, for medical assistance and administrative expenses for families participating in the project in the same manner as such payments may be made for medical assistance and administrative expenses for individuals entitled to benefits under title XIX of such Act, except that the aggregate amount of such payments may not exceed the aggregate amount of payments that would have been made for those families in the absence of such project.

(e) Definitions of Certain Terms.—As used in this section, the terms "family" and "contract" shall have the meaning given such terms by the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282.

(f) Quality Control.—Cases participating in the demonstration project under this section during a fiscal year shall be excluded from any sample taken for purposes of determining under section 403(i) or 408 of the Social Security Act, whichever is applicable, the rate at which the State made overpayments under part A of title IV of such Act for the fiscal year. For purposes of such sections 403(i) and 408, payments made by the State under the project shall be treated as payments made under the State plan approved under section 402(a) of such Act.

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[22] P.L. 101-508, §5059(11), struck out "part A" and substituted "parts A and F".

[23] P.L. 101-508, §5059(12)(A), inserted "except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282,".

[24] P.L. 101-508, §5059(12)(B), struck out "cash".

[25] P.L. 101-508, §5059(13), struck out "section 402(a)(19)(C) of such Act" and substituted "subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with an child under 1 year of age need not be specified in the State plan)".

(g) Evaluation of Project.—

(1) Evaluation plan.—The State shall develop and implement an evaluation plan designed to provide reliable information on the impact and implementation of the demonstration project. The evaluation plan shall include groups of project participants and control groups assigned at random in the field trial conducted in accordance with subsection (b)(1)(A).

(2) Evaluation.—The evaluation conducted under the evaluation plan shall measure the extent to which the project increases family employment and income, prevents long-term dependency, moves families toward self-support, reduces total assistance payments, and simplifies the welfare system.

(3) Reports.—The State shall issue an interim report and a final report on the results of the evaluation described in paragraph (2) to the Secretary of Health and Human Services at such times as the Secretary shall require.

(h) Report to Congress.—Within 3 months after receipt of the final report issued pursuant to subsection (g)(3), the Secretary of Health and Human Services shall report to the Congress the results of the evaluation described in subsection (g)(2).

(i) Construction.—For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act, the Food Stamp Act of 1977, or this section—

(1) families participating in the project shall be considered to be recipients of aid under such part; and

(2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.[36]

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Sec. 10202. [42 U.S.C. 1395b note] EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY THE EMPLOYERS.

(a) Old-Age, Survivors, and Disability, and Hospital Insurance Programs.—For purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(b) Railroad Retirement Program.—For purposes of chapter 22 of the Internal Revenue Code of 1986, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(c) Federal Unemployment Programs.—

(1) Federal unemployment tax.—For purposes of chapter 23 of the Internal Revenue Code of 1986, the term "wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(2) Railroad unemployment contributions.—For purposes of the Railroad Unemployment Insurance Act, the term "compensation" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(3) Railroad unemployment repayment tax.—For purposes of chapter 23A of the Internal Revenue Code of 1986, the term "rail wages" shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

(d) Reporting Requirements.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

(e) Effective Date.—This section shall apply with respect to refunds provided on or after January 1, 1989.

Sec. 10203. ELIMINATION OF ANY CARRYOVER REDUCTION IN RETIREMENT OR DISABILITY BENEFITS DUE TO RECEIPT OF WIDOW'S OR WIDOWER'S BENEFITS BEFORE ATTAINING AGE 62.

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(b) [42 U.S.C. 402 note] Effective Date.—The amendments made by this section shall apply—

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[36] P.L. 101-508, §5059(14), added paragraph (i).

(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and

(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3)(F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date.

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SEC. 10208. INCLUSION OF CERTAIN DEFERRED COMPENSATION IN DETERMINATION OF WAGE-BASED ADJUSTMENTS.

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(c) [42 U.S.C. 430 note] EFFECTIVE DATE.—

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(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977)—

(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined to the average of total wages for 1987,

(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1988 without regard to subparagraph (A), and

(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act and promulgated by the Secretary) for 1989, and

(ii) the quotient obtained by dividing—

(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

(4) REVISED DETERMINATION UNDER SECTION 230 OF THE SOCIAL SECURITY ACT.—As soon as possible after the enactment of this Act, the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.

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SEC. 10306. NOTICE REQUIREMENTS.

(a) APPLICABILITY TO BLIND BENEFICIARIES UNDER TITLE II OF NOTICE STANDARDS CURRENTLY APPLICABLE TO BLIND BENEFICIARIES UNDER TITLE XVI.—

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(2) [42 U.S.C. 421 note] APPLICATION TO CURRENT RECIPIENTS.—Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act on the basis of disability by reason of blindness an opportunity to make an election under section 221(l)(1) of such Act (as added by paragraph (1)).

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(b) [42 U.S.C. 902 note] REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH.—Not later than January 1, 1991, the Secretary of Health and Human Services shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth—

(1) the procedures of the Social Security Administration currently in effect for issuing notices in languages other than English to individuals who have a limited capacity to communicate with such Administration in English, and

(2) reasonable options for expanding the use of notices in languages other than English.

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SEC. 10404. [42 U.S.C. 1395b-1 note] **DEMONSTRATION PROJECT.**

(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for such children, not more than 10 communities may conduct demonstration projects under this section.

(b) DUTIES OF THE SECRETARY.—

(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall consider all applications received from communities desiring to conduct demonstration projects under this section.

(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secretary to assist the community in carrying out the project.

(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.

(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed—

(1) $1,000,000 for each of the fiscal years 1990 and 1991; and

(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.

(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.

SEC. 10405. [None assigned.] **AGENT ORANGE SETTLEMENT PAYMENTS EXCLUDED FROM COUNTABLE INCOME AND RESOURCES UNDER FEDERAL MEANS-TESTED PROGRAMS.**

(a) IN GENERAL.—

(1) TREATMENT OF PAYMENTS.—The payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.), shall not be considered income or resources in determining eligibility for the amount of benefits under any Federal or federally assisted program described in paragraph (2).

(2) PROGRAMS INVOLVED.—The program benefits described in this paragraph are—

(A) benefits under the supplemental security income program under title XVI of the Social Security Act;

(B) aid to families with dependent children under a State plan approved under section 402(a) of the Social Security Act;

(C) medical assistance under a State plan approved under section 1902(a) of the Social Security Act;

(D) benefits under title XX of the Social Security Act;

(E) benefits under the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977);

(F) benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966;

(G) benefits under section 336 of the Older Americans Act;

(H) benefits under the National School Lunch Act;

(I) benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture;

(J) benefits under the Low-Income Home Energy Assistance Act of 1981;

(K) benefits under part A of the Energy Conservation in Existing Buildings Act of 1976;

(L) benefits under any educational assistance grant or loan program which is administered by the Secretary of Education; and

(M) benefits under a State plan approved under title I, X, XIV, or XVI of the Social Security Act.

(b) EFFECTIVE DATE.—Subsection (a) shall take effect on January 1, 1989.

SEC. 10406. [42 U.S.C. 627 note] TREATMENT OF TRIENNIAL REVIEWS OF STATE FOSTER CARE PROTECTIONS FOR FISCAL YEARS BEFORE OCTOBER 1, 1991[27].

The Secretary of Health and Human Services shall not, before October 1, 1991[28], reduce any payment to, withhold any payment from, or seek any repayment from, any State under part B or E of title IV of the Social Security Act, by reason of a determination made in connection with any triennial review of State compliance with the foster care protections of section 427 of such Act for any Federal fiscal year preceding fiscal year 1992[29].

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SEC. 11002. [2 U.S.C. 902 note] RESTORATION OF FUNDS SEQUESTERED.

(a) ORDER RESCINDED.—(1) Upon the issuance of a new final order by the President under subsection (b)(4), the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.

(2) Except as otherwise provided in sections 6001, 6101, and 6201, and subject to subsection (b), any action taken to implement the order issued by the President on October 16, 1989, shall be reversed, and any sequesterable budgetary resource that has been reduced or sequestered by such order is restored, revived, or released and shall be available to the same extent and for the same purposes as if an order had not been issued.

(3) For purposes of section 702(d) and 1101(c) of the Ethics Reform Act of 1989, the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is deemed to be rescinded on January 31, 1990.

(b) ADJUSTED REDUCTION.—

(1) Before the close of the fifteenth calendar day beginning after the date of enactment of this Act, the Director of OMB shall issue a revised report using the exact budget baseline set forth in the report of October 16, 1989, and following the requirements, specifications, definitions, and calculations required by the Balanced Budget and Emergency Deficit Control Act of 1985 for the final report issued under section 251(c)(2) for fiscal year 1990, except that the aggregate outlay reduction to be achieved shall be an amount equal to $16.1 billion multiplied by 130 divided by 365. Calculations made to carry out the preceding sentence shall take into account the reductions and cancellations achieved by paragraphs (2) and (3) and shall not be affected by subsection (d).

(2) Notwithstanding any provision of law other than this paragraph, the reductions and cancellations in the student loan programs described in section 256(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 achieved by the order issued by the President on October 16, 1989, shall remain in effect through December 31, 1989, and no reductions or cancellations in such programs shall be made by the order issued under paragraph (4).

(3) Notwithstanding any provision of law other than this paragraph, any automatic spending increase suspended or cancelled by the order issued by the President on October 16, 1989, shall be paid at a rate that is 130/365ths less than the rate that would have been paid under the laws providing for such automatic spending increase.

(4) On the date that the Director submits a revised report to the President under paragraph (1) for fiscal year 1990, the President shall issue a new final order to make all of the reductions and cancellations specified in such report in conformity with section 252(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such order shall be deemed to have become effective on October 16, 1989.

(c) COMPLIANCE REPORT BY COMPTROLLER GENERAL.—Before the close of the thirtieth day beginning after the date the President issues a new final order under subsection (b)(4), the Comptroller General shall submit to the Congress and the President a compliance report setting forth the information required under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 with respect to such order.

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[27] P.L. 101-508, §5072(3), struck out "1990" and substituted "1991".

[28] P.L. 101-508, §5072(a)(2), struck out "1990" and substituted "1991".

[29] P.L. 101-508, §5072(a)(1), struck out "1991" and substituted "1992".

(d) No Double Reduction in Medicare.—With respect to items and services described in section 6001, 6101, or 6201 for periods for which reductions are made pursuant to the respective sections, no reduction shall be made under subsection (b).

[*Internal References.*—S.S. Act §§501(a), 1848(f), and 1905(s) cite the Omnibus Budget Reconciliation Act of 1989 and S.S. Act titles II, IV and part A, V, XVIII and part B, XIX, and XX and §§406, 408, 477, 1142, 1612(b), 1613(a), 1804, 1814(i) and 1848 catchlines and §§2(a), 202(q), 221(l), 230(b), 402(a), 1002(a), 1402(a), 1602(a), 1819(b) and (g), 1834(b), 1864(a), 1870(c), 1886(d), 1888(a), 1902(a), (e), (f), (l), and (r), 1903(a) and (f), 1905(a), (m), (p), and (s), 1916(d) and 1919(b) have footnotes referring to P.L. 101-239.]

Provisions Affecting Social Security Programs
P.L. 101-277, Approved April 30, 1990 (104 Stat. 143)
[Indian Claims: Distribution of Funds to Seminole Indians]

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Sec. 8. [None assigned.]

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(b) None of the funds held in trust by the United States under this Act (including interest and investment income accrued on such funds while such funds are held in trust by the United States), and none of the funds distributed per capita or made available under this Act for programs, shall be subject to Federal, State, or local income taxes, nor shall such funds nor their availability be considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita payments in excess of $2,000, any other Federal or federally assisted program.

[*Internal References.*—S.S. Act §§1612(b) and 1613(a) catchlines and §§2(a), 402(a), 1002(a), 1402(a), and 1602(a)(State) have a footnote referring to P.L. 101-277.]

P.L. 101-403, Approved October 1, 1990 (104 Stat. 867)
[Continuing Appropriations for Fiscal Year 1991]

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Extension of Certain Medicare Hospital Payment Provisions

Sec. 115. [42 U.S.C. 1395ww note] (a) Extension of Area Wage Index.—For purposes of determining the amount of payment made to a hospital under part A of title XVIII of the Social Security Act for the operating costs of inpatient hospital services for discharges occurring on or after October 1, 1990, and on or before October 20, 1990, the Secretary of Health and Human Services, in adjusting such amount under section 1886(d)(3)(E) of such Act to reflect the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage index, shall apply the area wage index applicable to such hospital as of September 30, 1990.

(b) Extension of Regional Floor on Standardized Amounts.—

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(2) The Secretary of Health and Human Services shall make any adjustments resulting from the amendment made by paragraph (1) in the amount of the payments made to hospitals under section 1886(d) of the Social Security Act in a fiscal year for the operating costs of inpatient hospital services in a manner that ensures that the aggregate payments under such section are not greater or less than those that would have been made in the year without such adjustments.

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[*Internal References.*—S.S. Act §1886(d) and (d)(3)(E) have footnotes referring to P.L. 101-403.]

Provisions Affecting Social Security Programs
P.L. 101-508, Approved November 5, 1990 (104 Stat. 143)
Omnibus Budget Reconciliation Act of 1990

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SEC. 4002. [None assigned.] PROSPECTIVE PAYMENT HOSPITALS.

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(d) [42 U.S.C. 1395ww note] AREA WAGE INDEX.—

(1) DETERMINATION OF AREA WAGE INDEX.—(A) For purposes of section 1886(d)(3)(E) of the Social Security Act for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.

(2) STUDY OF AREA WAGE INDEX ADJUSTMENTS BASED ON PROFESSIONAL OCCUPATIONAL COMPONENT.—

(A) STUDY.—The Prospective Payment Assessment Commission shall examine available data from States and other sources measuring earnings and paid hours of employment of hospital workers by occupational category, and shall include in such examination an analysis of the impact of variation in occupational mix on the computation of the area wage index determined under section 1886(d)(3)(E) of the Social Security Act.

(B) REPORT TO CONGRESS.—In its March 1991 report, the Commission shall include recommendations regarding the feasibility and desirability of modifying such area wage index to take into account occupational mix, including variations in occupational mix resulting from differences in State codes and requirements.

(e) EXTENSION OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS.—

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(2) [42 U.S.C. 1395ww note] STUDY.—(A) The Secretary of Health and Human Services shall collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under section 1886(d)(3) of the Social Security Act to identify the extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices.

(B) Not later than June 1, 1993. the Secretary shall submit a report to Congress analyzing such data, and shall include in such report recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

(C) The provisions of chapter 35 of title 44, United States Code, shall not apply to data collected by the Secretary under subparagraph (A).

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(g) RESPONSIBILITIES AND REPORTING REQUIREMENTS OF PROSPECTIVE PAYMENT ASSESSMENT COMMISSION.—

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(4) PROPAC STUDY OF MEDICAID PAYMENTS TO HOSPITALS.—

(A) STUDY.—The Prospective Payment Assessment Commission shall conduct a study of hospital payment rates under State plans for medical assistance under title XIX of the Social Security Act, and shall specifically examine in such study the relationship between payments under such plans and payments made to hospitals under title XVIII of such Act, and the financial condition of hospitals receiving payments under such plans, with particular attention to hospitals in urban areas which treat large numbers of individuals eligible for medical assistance under title XIX of such Act and other low-income individuals.

(B) REPORT.—By not later than October 1, 1991, the Commission shall submit a report to Congress on the study conducted under subparagraph (A) and shall include in such report such recommendations relating to requirements for payments to hospitals under title XIX of such Act as the

Commission deems appropriate.

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(h) PROVISIONS RELATING TO GEOGRAPHIC CLASSIFICATION OF HOSPITALS.—

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(2) [42 U.S.C. 1395ww note] GEOGRAPHIC CLASSIFICATION REVIEW BOARD.—

(A) DEADLINE FOR SUBMISSION OF APPLICATIONS.—For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.

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SEC. 4003. [None assigned.] EXPANSION OF DRUG PAYMENT WINDOW.

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(b) [42 U.S.C. 1395ww note] EFFECTIVE DATE.—The amendment made by subsection (a) shall apply—

(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act and before October 1, 1991;

(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

(3) in the case of any other services, to services furnished on or after October 1, 1991.

(c) ISSUANCE OF INTERIM FINAL REGULATION.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section.

SEC. 4004. [42 U.S.C. 1395ww note] PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such programs; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

SEC. 4005. [None assigned.] PPS-EXEMPT HOSPITALS.

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(b) [42 U.S.C. 1395ww note] DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act) receive payment for the operating and capital-related costs of inpatient hospital services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medical program;

(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(c) APPEALS OF TARGET AMOUNTS.—

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(3) [42 U.S.C. 1395ww note] GUIDANCE TO INTERMEDIARIES AND HOSPITALS.—The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.

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SEC. 4007. [42 U.S.C. 1395ww note] FREEZE IN PAYMENTS UNDER PART A THROUGH DECEMBER 31.

(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act (including payments under section 1886 of such Act attributable to or allocated under such part) during the period described in subsection (b):

(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act shall be deemed to be 0.

(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.

SEC. 4008. MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART A.

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(c) [42 U.S.C. 1395dd note] INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS.—

(1) STUDY.—The Secretary of Health and Human Services (acting through the Inspector General of the Department of Health and Human Services) shall conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and shall include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act relating to the examination and treatment of individuals with an emergency medical condition and women in labor.

(2) REPORT.—By not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1).

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(h) NURSING HOME REFORM.—

(1) [42 U.S.C. 1395aa note] NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(A) NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

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(F) * * *

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(ii) [42 U.S.C. 1395i-3 note] EFFECTIVE DATE.—The amendments made by clause (i) shall take effect as if included in the enactment of the

Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(I) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(II) was subject to a denial of payment under either such title;

(III) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(IV) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(V) pursuant to State action, was closed or had its residents transferred.

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(2) * * *

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(O) [42 U.S.C. 1395i-3 note] MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

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(i) [42 U.S.C. 1395b-1 note] CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY.—

(1) RURAL HOSPITAL DEMONSTRATION.—The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989.

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(j) DETERMINATION OF REASONABLE COSTS RELATING TO SWING BEDS.—

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(2) [42 U.S.C. 1395tt note] HOLD HARMLESS.—If, as a result of the amendment made by paragraph (1), the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act) is less than the reasonable cost of such services determined under such section for the previous calendar year the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.

(3) [42 U.S.C. 1395tt note] SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987.—Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.

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(k) [42 U.S.C. 1395yy note] PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

(2) Reports.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(l) [42 U.S.C. 1395ww note] Review of Hospital Regulations With Respect to Rural Hospitals.—

(1) In general.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

(2) Report.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).

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SEC. 4101. [None assigned.] CERTAIN OVERVALUED PROCEDURES.

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(b) [42 U.S.C. 1395u note] Unsurveyed Surgical and Technical Procedures.—* * *

(2) In applying section 1842(b)(16) of the Social Security Act:

(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

(B) The codes for the procedures specified in clause (iii) are as follows: Partial, simple subcutaneous mastectomy (HCPCS codes 19160 and 19162); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 3203[illegible] and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code

69645); and ophthalmoscopy (HCPCS codes 92250, and 92260).".[1]

SEC. 4102. [None assigned.] RADIOLOGY SERVICES.

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(c) [42 U.S.C. 1395m note] Reduction in Prevailing Charge Level for Other Radiology Services.—

(1) In general.—In applying part B of title XVIII of the Social Security Act, the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act with respect to such services.

(2) Exception.—Paragraph (1) shall not apply to radiology services which are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

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(e) [42 U.S.C. 1395m note] Limitation on Adjustments.—For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act—

(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act, in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

(3) section 1842(b)(9) of such Act shall not apply.

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SEC. 4104. [None assigned.] PHYSICIAN PATHOLOGY SERVICES.

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(c) [42 U.S.C. 1395w-4 note] Ancillary Policy.—The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act, shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.

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SEC. 4105. [None assigned.] UPDATE FOR PHYSICIANS' SERVICES.

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(b) Increase in Prevailing Charge Floor for Primary Care Services.—

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(2) [42 U.S.C. 1395w-4 note] Budget neutral implementation.—In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act for physicians' services in 1991 assuming that the amendments made by this subsection did not apply.

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(d) [42 U.S.C. 1395w-4 note] Not later than 45 days after the date of the enactment of this Act, the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act for fiscal year 1991.

SEC. 4106. [None assigned.] NEW PHYSICIANS AND OTHER NEW HEALTH CARE PRACTITIONERS.

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(c) [42 U.S.C. 1395w-4 note] Conforming Adjustment in Conversion Factor Computation.—In computing the conversion factor under section 1848(d)(1)(B), for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B for physicians' services in 1991 assuming that the amendments made by this section (notwithstanding subsection (d)) applied to all services furnished during such year.

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[1] As in original. The " ". " should be deleted.

(d) [42 U.S.C. 1395u note] Effective Dates.—

(1) The amendments made by subsection (a) apply to services furnished after 1990, except that—

(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

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SEC. 4111. [42 U.S.C. 1395u note] STUDY OF PREPAYMENT MEDICAL REVIEW SCREENS.

(a) In General.—The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

(b) Limitations.—The study shall be based upon the release of the screen parameters at a minimum of six carriers.

(c) Report.—The Secretary of Health and Human Services shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.

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SEC. 4113. [42 U.S.C. 1395ff note] STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES.

The Secretary of Health and Human Services shall carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under section 1869(b)(2). Such study shall be conducted in at least four carrier areas. The Secretary shall report on the results of such study and any recommendations to the Committee on Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives by December 31, 1992.

SEC. 4114. [42 U.S.C. 1395u note] UTILIZATION SCREENS FOR PHYSICIAN VISITS IN REHABILITATION HOSPITALS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit patients after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 has been exceeded.

SEC. 4115. [42 U.S.C. 1395w-4 note] STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM.

(a) Study.—The Secretary of Health and Human Services shall conduct a study of—

(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

(2) the extent to which the geographic practice cost indicies applied under the fee schedule established under section 1848 of the Social Security Act accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indicies);

(3) the impact of the transition to a national, resource-based fee schedule for physicians' services under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

(b) Report.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

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SEC. 4117. [42 U.S.C. 1395w-4 note] STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES.

(a) In General.—Notwithstanding section 1842(j)(2) of the Social Security Act (42 U.S.C. 1395w-4(j)(2)), in the case of the States of Nebraska and Oklahoma, if the respective State meets the requirements specified in subsection (b) on or before April 1, 1991, the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w-4(a)(2)(D))), and

(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w-4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w-4(j)(3)) furnished on or after January 1, 1992.

(b) Requirements.—The requirements specified in this subsection are that (on or before April 1, 1991) there are written expressions of support for treatment of the State as a single fee schedule area (on a budget-neutral basis) from—

(1) each member of the congressional delegation from the State, and

(2) organizations representing urban and rural physicians in the State.

(c) Budget Neutrality.—Notwithstanding section 1842(b)(3)), of such Act (42 U.S.C. 1395u(b)(3)), the Secretary shall provide for treatment of a State as a single fee schedule (as described in subsection (a)) in a manner that ensures that total payments for physicians' services (as so defined) furnished by physicians in the State during 1992 are not greater or less than total payments for such services would have been but for such treatment.

(d) Construction.—Nothing in the subsection shall be construed as limiting the availability (to the Secretary, the appropriate agency or organization with a contract under section 1842, or physicians in a State) of otherwise applicable administrative procedures for modifying the fee schedule area or areas in the State after implementation of subsection (a) with respect to the State.

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SEC. 4151. [None assigned.] PAYMENTS FOR OUTPATIENT HOSPITAL SERVICES.

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(b) Reduction in Reasonable Costs of Hospital Outpatient Services.—

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(2) [42 U.S.C. 1320b-5 note] Prospective payment system for hospital outpatient services.—

(A) Development of proposal.—The Secretary of Health and Human Services shall develop a proposal to replace the current system under which payment is made for hospital outpatient services under title XVIII of the Social Security Act with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph, the Secretary shall consider—

(i) the need to provide for appropriate limits on increases in expenditures under the medicare program;

(ii) the need to adjust prospectively determined rates to account for changes in a hospital's outpatient case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(iii) providing hospitals with incentives to control the costs of providing outpatient services;

(iv) the feasibility and appropriateness of including payment for outpatient services not currently paid on a cost-related basis under the medicare program (including clinical diagnostic laboratory tests and dialysis services) in the system;

(v) the need to increase payments under the system to hospitals that treat a disproportionate share of low-income patients, teaching hospitals, and hospitals located in geographic areas with high wages and wage-related costs;

(vi) the feasibility and appropriateness of bundling services into larger units, such as episodes or visits, in establishing the basic unit for making payments under the system; and

(vii) the feasibility and appropriateness of varying payments under the system on the basis of whether services are provided in a free-standing or hospital-based facility.

(B) Reports.—(i) By not later than January 1, 1991, the Administrator of the Health Care Financing Administration shall submit research findings relating to prospective payments for hospital outpatient services to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives.

(ii) By not later than September 1, 1991, the Secretary shall submit the proposal developed under subparagraph (A) to such Committees.

(iii) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under subparagraph (A) to such Committees.

(c) PAYMENTS FOR AMBULATORY SURGICAL PROCEDURES AND RADIOLOGY SERVICES.—

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(3) [42 U.S.C. 1395l note] 2-YEAR FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES.—Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act, the amount of payment determined under such section for the insertion of an intraocular lens during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act and on or before December 31, 1992, shall be equal to $200.

SEC. 4152. [None assigned.] DURABLE MEDICAL EQUIPMENT.

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(d) [42 U.S.C. 1395u note] FREEZE IN REASONABLE CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1991.—In determining the amount of payment under part B of title XVIII of the Social Security Act for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.

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SEC. 4153. [None assigned.] PROVISIONS RELATING TO ORTHOTICS AND PROSTHETICS.

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(b) PROVISIONS RELATING TO EYEGLASSES.—

(1) [42 U.S.C. 1395u note] PROHIBITION ON REGULATIONS.—(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the "Secretary") may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act) following cataract surgery with insertion of an intraocular lens.

(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).

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(c) [42 U.S.C. 1395m note] GAO STUDY OF MEDICARE PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS.—

(1) STUDY.—The Comptroller General shall conduct a study of the feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under section 1834(a) of the Social Security Act with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report on the study conducted under subparagraph (A) to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and shall include in such report and recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program that the Comptroller General considers appropriate.

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SEC. 4156. [None assigned.] COVERAGE OF INJECTABLE DRUGS FOR TREATMENT OF OSTEOPOROSIS.

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(b) [42 U.S.C. 1395x note] STUDY OF EFFECTS OF COVERAGE.—

(1) In general.—The Secretary of Health and Human Services shall conduct a study analyzing the effects of coverage of osteoporosis drugs under part B of title XVIII of the Social Security Act (as amended by subsection (a)) on the health of individuals enrolled under such part and the utilization of inpatient hospital and extended care services by such individuals.

(2) Report.—By not later than October 1, 1994, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in such report such recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considers appropriate.

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SEC. 4158. [42 U.S.C. 1395l note] REDUCTION IN PAYMENTS UNDER PART B DURING FINAL 2 MONTHS OF 1990.

(a) In General.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

(b) Special Rules for Application of Reduction.—

(1) Payment on the basis of cost reporting periods.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

(2) No increase in beneficiary charges in assignment-related cases.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

(3) Treatment of payments to health maintenance organizations.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act or under similar contracts under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972.

SEC. 4159. [42 U.S.C. 1395ww note] PAYMENTS FOR MEDICAL EDUCATION COSTS.

(a) Hospital Graduate Medical Education Recoupment.—

(1) In general.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h).

(2) Cap on annual amount of recoupment.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

(3) Effective date.—Paragraphs (1) and (2) shall take effect October 1, 1990.

(b) University Hospital Nursing Education.—

(1) In general.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

(2) Conditions for reimbursement.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

(C) the hospital receives a benefit for the support it furnishes to such program through the provisions of clinical services by nursing or allied health students participating in such program; and

(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act).

(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act, the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of cost incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.

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SEC. 4161. [None assigned.] COMMUNITY HEALTH CENTERS AND RURAL HEALTH CLINICS.

(a) COMMUNITY HEALTH CENTERS.—

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(7) [42 U.S.C. 254b note] GAO STUDY OF HOSPITAL STAFF PRIVILEGES FOR PHYSICIANS PRACTICING IN COMMUNITY HEALTH CENTERS.—

(A) STUDY.—The Comptroller General shall conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hosptials. The study shall review—

(i) how many physicians practicing in such centers are without hospital admitting privileges or have been denied admitting privileges at a local hospital, and

(i)[2](I) the criteria hospitals use in deciding whether to grant admitting privileges and (II) whether such criteria act as significant barriers to health center physicians obtaining hospital privileges.

(B) REPORT.—By not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and shall include in such report such recommendations as the Comptroller General deems appropriate.

(8) [42 U.S.C. 1395k note] EFFECTIVE DATE.—(A) Subject to subparagraphs (B) and (C), the amendments made by this section shall apply to services furnished on or after October 1, 1991.

(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act, to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

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[2] As in original. Possibly should be "(ii)".

(b) RURAL HEALTH CLINIC SERVICES.—

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(3) [42 U.S.C. 1395x note] PRODUCTIVITY SCREENS.—In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guidelines shall take into account the combined services of such staff (and not merely the service within each class of practitioner).

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SEC. 4164. [None assigned.] MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PART B.

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(b) DISCLOSURE OF OWNERSHIP.—

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(4) [42 U.S.C. 1320a-3a note] EFFECTIVE DATE.—The amendments made by paragraph (1), (2), and (3) shall apply with respect to items or services furnished on or after—

(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act, has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act; or

(B) January 1, 1992, in the case of items or services furnished by any other provider.

(c) [42 U.S.C. 1395u note] DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS.—Not later than March 31, 1991, the Secretary of Health and Human Services shall publish a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act, and shall include in such directory the names, provider numbers, and billing addressess of all listed physicians.

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SEC. 4201. [None assigned.] PROVISIONS RELATING TO END STAGE RENAL DISEASE.

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(b) [42 U.S.C. 1395rr note] PROPAC STUDY ON ESRD COMPOSITE RATES.—

(1) IN GENERAL.—

(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the "Commission") shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act.

(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagrpah (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

(i) hemodialysis and other modalities of treatment,

(ii) the appropriate services to be included in such payments,

(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

(iv) adjustments for labor and nonlabor costs,

(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and

Means and Energy and Commerce of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

(3) ANNUAL REPORT.—The Commissions, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives on an appropriate change factor which should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.

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SEC. 4202. [42 U.S.C. 1395rr note] **STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT.**

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a home hemodialysis staff assistant provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term "services of a home hemodialysis staff asstistant" means—

(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

(ii) administration of medications within the patient's home to maintain the potency of the extra corporeal circuit.

(2) AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of

(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act is adjusted for differences in area wage levels.

(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility (as adjusted to reflect differences in area wage levels), and

(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

(iii) For purposes of clause (ii)(II)—

(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

(A) the individual is not a resident of a skilled nursing facility;

(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act;

(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves from a bed to a chair;

(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(4); and

(F) no family member or other individual is able to provide such assistance to the individual.

(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act, is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act shall be deemed to be an eligible individual for purposes of this subsection.

(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

(1) meets minimum qualifications as specified by the Secretary; and

(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

(e) REPORTS.—

(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts);

(1) For fiscal year 1991, $4,000,000.
(2) For fiscal year 1992; $4,000,000.
(3) For fiscal year 1993, $3,000,000.
(4) For fiscal year 1994; $2,000,000.
(5) For fiscal year 1995; $1,000,000.

SEC. 4203. [None assigned.] EXTENSIONS OF SECONDARY PAYOR PROVISIONS.

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(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—

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(2) [42 U.S.C. 1395y note] GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD.—(A) The Comptroller General shall conduct a study of the impact of the application of clause (iii) of section 1862(b)(1)(C) of the Social Security Act on individuals entitled to benefits under title XVIII of such Act, by reason of section 226A of such Act, and shall include in such report information relating to—

(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

(ii) the amount of savings to the medicare program achieved annually by reason of the application of such clause;

(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary;

(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) to all group health plans.

(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.

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SEC. 4204. [None assigned.] HEALTH MAINTENANCE ORGANIZATIONS.

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(b) [42 U.S.C. 1395mm note] REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC.—(1) Not later than January 1, 1992, the Secretary of Health and Human Services (in this section referred to as the "Secretary") shall submit a proposal to Congress that provides for a modified payment method for organizations with a risk contract under section 1876(g) of the Social Security Act that is more accurate than the current payment methodology in predicting the actual service utilization and annual medical expenditures of the beneficiary population enrolled in a specific organization.

(2) The proposal shall include—

(A)(i) recommendations on modifying the current adjusted average per capita cost formula, by adding predictors of medical utilization such as health status adjustors or prior utilization measures; or

(ii) recommendations for a new payment methodology as an alternative to the adjusted average per capita cost;

(B) data to support and recommended changes in payment methodology for organizations with risk contracts under section 1876(g) of the Social Security Act; and

(C) analysis demonstrating that any proposed or revised payment methodology under this section is effective in explaining at least 15 percent of the variation in health care utilization and costs (as determined in consultation with the American Academy of Actuaries) among individuals enrolled in such organizations.

(3) Not later than March 1, 1992, the Secretary shall cause to have published in the Federal Register a proposed rule providing for the implementation of the payment methodology specified in the proposal submitted pursuant to paragraph (1).

(4) Not later than May 1, 1992, the Comptroller General shall review the proposal and recommendations made pursuant to paragraphs (1) and (2), and shall report to Congress on appropriate modifications in such payment methodology.

(5) Taking into account the recommendations made pursuant to paragraph (4), on or after August 1, 1992, the Secretary shall issue a final rule implementing a payment methodology that meets the requirements of paragraph (1), effective for contract years beginning on or after January 1, 1993.

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(f) [42 U.S.C. 1395mm note] STUDY OF CHIROPRACTIC SERVICES.—

(1) The Secretary shall conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act

make available to enrollees entitled to benefits under title XVIII of such Act chiropractic services that are covered under such title.

(2) The study shall examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees.

(3) The study shall be based on contracts entered into or renewed on or after January 1, 1991 and before January 1, 1993.

(4) The Secretary shall issue a final report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the results of the study not later than January 1, 1993. The report shall include recommendations with respect to any legislative and regulatory changes that the Secretary determines are necessary to ensure access to such services.

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SEC. 4205. [None assigned.] PEER REVIEW ORGANIZATIONS.

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(c) [42 U.S.C. 1320c note] COORDINATION OF PROs AND CARRIERS.—

(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

(A) the development of common utilization and medical review criteria;

(B) criteria for the targetting of reviews by peer review organizations and carriers; and

(C) improved methods for exchange of information among peer review organizations and carriers.

(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.

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SEC. 4206. [None assigned.] MEDICARE PROVIDER AGREEMENTS ASSURING THE IMPLEMENTATION OF A PATIENT'S RIGHT TO PARTICIPATE IN AND DIRECT HEALTH CARE DECISIONS AFFECTING THE PATIENT.

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(c) [42 U.S.C. 1395cc note] EFFECT ON STATE LAW.—Nothing in subsections (a) and (b) shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.

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SEC. 4027[3]. [None assigned.] MISCELLANEOUS AND TECHNICAL PROVISIONS RELATING TO PARTS A AND B.

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(b) EXTENSIONS OF EXPIRING PROVISIONS.—

(1) [42 U.S.C. 1395ww note] PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR.—Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974) of more than $50,000,000, except as follows:

(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.

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[3] As in original. Should be "4207".

(2) [42 U.S.C. 1395ww note] PROHIBITION OF PAYMENT CYCLE CHANGES.—Notwithstanding any other provisions of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act.

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(c) [42 U.S.C. 1395x note] DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES.—

(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which payment is made for home health services under title XVIII of the Social Security Act or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

(B) provide for adjustments to prospectively determined rates to account for changes in a provider's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of treatment or costs of treatment provided for under the applicable prospectively determined payment rate;

(D) take into consideration the need to adjust payments under the system to take into account factors such as differences in wages and wage-related costs among agencies located in various geographic areas and other factors the Secretary considers appropriate; and

(E) analyze the feasibility and appropriateness of establishing the episode of illness as the basic unit for making payments under the system.

(2) REPORTS.—(A) By not later than April 1, 1993, the Secretary of Health and Human Services shall submit the research findings upon which the proposal described in paragraph (1) shall be based to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(B) By not later than September 1, 1993, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(C) By not later than March 1, 1994, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(d) HOME HEALTH WAGE INDEX.—

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(2) [42 U.S.C. 1395x note] APPLICATION ON BUDGET-NEUTRAL BASIS.—In updatng the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act will be no greater or lesser than such payments would have been without regard to such update.

(3) TRANSITION PROVISION.—Notwithstanding section 1861(v)(1)(L)(iii) of the Social Security Act, the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of such Act with respect to services furnished by a home health agency, utilize a wage index equal to—

(A) for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of—

(i) 67 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-realted costs of hospitals in the United States conducted under such section, and

(ii) 33 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section; and

(B) for cost reporting periods beginning on or after June 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of—

(i) 33 percent of the area wage index applicable under section 1861(v)(1)(L)(iii) of such Act to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States conducted under such section, and

(ii) 67 percent of the area wage index applicable under section 1886(d)(3)(E) of such Act to hospitals located in the geographic area in which the home health agency is located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

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(f) [42 U.S.C. 1395b-1 note] Case Management Demonstration Project.—

(1) In general.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 (in this subsection referred to as "MCCA").

(2) Project descriptions.—The demonstration projects referred to in paragraph (1) are—

(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18-P-99379/5-01;

(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P-99399/4-01; and

(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18-P-99396/5.

(3) Terms and conditions.—Except as provided in paragraph (4), the demonstration projects resumed pursuant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

(4) Authorization of appropriations.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administration costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.

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(i) Modification of Home Health Agency Deficiency Standards.—

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(2) [42 U.S.C. 1395bbb note] Effective date.—The amendments made by paragraph (1) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act;

(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title.[4]

(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

(v) pursuant to State action, was closed or had its residents transferred.

(j) [42 U.S.C. 1395hh note] Use of Interim Final Regulations.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this title and the amendments made by this title.

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[4] As in original. Possibly should be a semicolon.

SEC. 4358. [None assigned.] MEDICARE SELECT POLICIES.

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(d) [42 U.S.C. 1395ss note] EVALUATION.—The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section and shall report to Congress on such evaluation by not later than January 1, 1995.

SEC. 4359. [42 U.S.C. 1395b-3] HEALTH INSURANCE ADVISORY SERVICE FOR MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the "beneficiary assistance program") to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) OUTREACH ELEMENTS.—The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) ASSISTANCE PROVIDED.—The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—

(A) eligibility,

(B) benefits (both covered and non covered),

(C) the process of payment for services,

(D) rights and process for appeals of determinations,

(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and

(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—

(A) eligibility, benefits, and the application process,

(B) linkages between the medicaid and medicare programs, and

(C) referral to appropriate State and Local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—

(A) the program under section 1882 of the Social Security Act, and standards required under such program,

(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,

(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and

(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) EDUCATIONAL MATERIAL.—The Secretary through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) NOTICE TO BENEFICIARIES.—The Secretary shall take such steps as are necessary to asure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) REPORT.—The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

SEC. 4360. [42 U.S.C. 1395b-4] HEALTH INSURANCE INFORMATION, COUNSELING, AND ASSISTANCE GRANTS.

(a) GRANTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall make grants to States, with approved State regulatory programs under section 1882 of the Social Security Act, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under title XVIII of the Socal Security Act (in this section referred to as "eligible individuals"). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) GRANT APPLICATIONS.—

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—

(i) information that may assist individuals in obtaining benefits and filing claims under titles XVIII and XIX of the Social Security Act;

(ii) policy comparison information for medicare supplemental policies (as described in section 1882(g)(1) of the Social Security Act and information that may assist individuals in filing claims under medicare supplemental policies;

(iii) information regarding long-term care insurance; and

(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agecies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the services described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counselng described in subparagraph (A) and the assistance described in subparagraph (B) to eligible individuals; and

(J) demonstrate to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) SPECIAL GRANTS.—

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediatley preceding the date of the issurance of any grant during the period of time covered by such grant under this section and that such activities will continue to be maintained at such level.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program in subsection (b)(2), the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) CRITERIA FOR ISSUING GRANTS.—In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2), including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under title XIX of the Social Security Act, and

(ii) administering funds appropriated under the Older Americans Act;

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance to the rural areas of such State.

(e) ANNUAL STATE REPORT.—A State that receives a grant under subsection (c) or (d)[5] shall, not later than 180 days after receiving such grant, and annually thereafter, issue an annual report to the Secretary that includes information concerning—

(1) the number of individuals served by the State-wide health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) REPORT TO CONGRESS.—Not later than 100 days after the date of the enactment of this section, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) summarizes the scope and content of training conferences convened under this section;

(3) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(4) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3); and

(5) in the case of the report issued 2 years after the date of enactment of this section, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(f)[6] AUTHORIZATION OF APPROPRIATIONS FOR GRANTS.—There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992 and 1993 to fund the grant programs described in this section.

SEC. 4361. MEDICARE AND MEDIGAP INFORMATION BY TELEPHONE.

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(b) [42 U.S.C. 1395zz note] DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.

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SEC. 4401. [None assigned.] REIMBURSEMENT FOR PRESCRIBED DRUGS.

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(b) FUNDING.—

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[5] As in original. Possibly should be "(a) or (c)".

[6] As in original. Possibly should be subsection (g).

(2) [42 U.S.C. 1396b note] TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS.—The percentum to be applied under section 1903(a)(7) of the Social Security Act for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.

(c) [42 U.S.C. 1396r-8 note] DEMONSTRATION PROJECTS.—

(1) PROSPECTIVE DRUG UTILIZATION REVIEW.—

(A) The Secretary of Health and Human Services shall provide, through competitive procurement by not later than January 1, 1992, for the establishment of at least 10 statewide demonstration projects to evaluate the efficiency and cost-effectiveness of prospective drug utilization review (as a component of on-line, real-time electronic point-of-sales claims management) in fulfilling patient counseling and in reducing costs for prescription drugs.

(B) Each of such projects shall establish a central electronic repository for capturing, storing, and updating prospective drug utilization review data and for providing access to such data by participating pharmacists (and other authorized participants).

(C) Under each project, the pharmacist or other authorized participant shall assess the active drug regimens of recipients in terms of duplicate drug therapy, therapeutic overlap, allergy and cross-sensitivity reactions, drug interactions, age precautions, drug regiment compliance, prescribing limits, and other appropriate elements.

(D) Not later than January 1, 1994, the Secretary shall submit to Congress a report on the demonstration projects conducted under this paragraph.

(2) DEMONSTRATION PROJECT ON COST-EFFECTIVENESS OF REIMBURSEMENT FOR PHARMACISTS' COGNITIVE SERVICES.—

(A) The Secretary of Health and Human Services shall conduct a demonstration project to evaluate the impact on quality of care and cost-effectiveness of paying pharmacists under title XIX of the Social Security Act, whether or not a drug is dispensed, for drug use review services. For this purpose, the Secretary shall provide for no fewer than 5 demonstration sites in different States and the participation of a significant number of pharmacists.

(B) Not later than January 1, 1995, the Secretary shall submit a report to the Congress on the results of the demonstration project conducted under subparagraph (A).

(d) [42 U.S.C. 1396r-8 note] STUDIES.—

(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS.—

(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

(B) The study conducted under this subsection shall include an assessment of—

(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section,

(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

(iii) the efficiency of mechanisms used by thse institutions for billing and receiving payment for covered outpatient drugs dispensed under this title.

(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary"), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

(2) REPORT ON DRUG PRICING.—By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

(3) STUDY ON PRIOR APPROVAL PROCEDURES.—

(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act, including—

(i) the appeals provisions under such programs; and

(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagrpah (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS.—

(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to pharmacists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A).

(5) STUDY OF PAYMENTS FOR VACCINES.—The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act.

(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE.—The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such Study no later than 1 year after the date of enactment of this subsection.

SEC. 4402. [None assigned.] REQUIRING MEDICAID PAYMENT OF PREMIUMS AND COST-SHARING FOR ENROLLMENT UNDER GROUP HEALTH PLANS WHERE COST-EFFECTIVE.

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(e) [42 U.S.C. 1396a note] EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additonal requirements imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

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SEC. 4601. [None assigned.] MEDICAID CHILD HEALTH PROVISIONS.

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(b) [42 U.S.C. 1396a note] EFFECTIVE DATE.—(1) The amendments made by this subsection apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

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SEC. 4604. [None assigned.] ADJUSTMENT IN PAYMENT FOR HOSPITAL SERVICES FURNISHED TO LOW-INCOME CHILDREN UNDER THE AGE OF 6 YEARS.

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(d) [42 U.S.C. 1396a note] Effective Date.—* * *

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

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SEC. 4607. [42 U.S.C. 1396b note] REPORT AND TRANSITION ON ERRORS IN ELIGIBILITY DETERMINATIONS.

(a) Report.—The Secretary of Health and Human Services shall report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1902(l)(1) of the Social Security Act for medical assistance under plans approved under title XIX of such Act. Such report may include data for medical assistance provided before July 1, 1989.

(b) Error Rate Transition.—There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act, payments and expenditures for medical assistance which—

(1) are attributable to medical assistance for individuals described in subparagraph (A) or (B) of section 1902(l)(1) of such Act, and

(2) are made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the report under subsection (a).

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SEC. 4706. [42 U.S.C. 1396d note] LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21.

(a) In General.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act, and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act relating to the failure of a psychiatric facility to comply with certification of need requirements—

(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

(b) Effective Date.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act.

SEC. 4707. [None assigned.] TREATMENT OF INTEREST ON INDIANA DISALLOWANCE.

With respect to any disallowance of Federal financial participation under section 1903(a) of the Social Security Act for intermediate care facility services, intermediate care facility services for the mentally retarded, or skilled nursing facility services on the ground that the facilities in the State of Indiana were not certified in accordance with law during the period beginning June 1, 1982, and ending September 30, 1984, payment of such disallowance may be deferred without interest that would otherwise accrue without regard to this subsection, until every opportunity to appeal has been exhausted.

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SEC. 4718. [42 U.S.C. 1396b note] MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES.

(a) In General.—For purposes of section 1903(f)(1)(B), for payments made before, on, or after the date of the enactment of this Act, a State described in subparagraph (B) may use, in determining the "highest amount which would ordinarily be paid to a family of the same size" (under the State's plan approved under part A of title IV of such Act) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

(b) States Covered.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2273(c)(5) of the Deficit Reduction Act of 1984 (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987).

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SEC. 4720. [None assigned.] PERSONAL CARE SERVICES FOR MINNESOTA.

(a) Clarification of Coverage.—In applying section 1905 of the Social Security Act with respect to Minnesota, medical assistance shall include payment for personal care services described in subsection (b).

(b) [42 U.S.C. 1396d note] Personal Care Services Defined.—For purposes of this section, the term "personal care services" means services—

(1) prescribed by a physician for an individual in accordance with a plan of treatment,

(2) provided by a person who is qualified to provide such services who is not a member of the individual's family,

(3) supervised by a registered nurse, and

(4) furnished in a home or other location;

but does not include such services furnished to an inpatient or resident of a hospital or nursing facility.

(c) Effective Date.—This section shall take effect on the date of the enactment of this Act and shall apply with respect to—

(1) personal care services furnished before such date pursuant to regulations in effect as of July 1, 1989; and

(2) such services furnished before October 1, 1994.

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SEC. 4742. [None assigned.] TIMELY PAYMENT UNDER WAIVERS OF FREEDOM OF CHOICE OF HOSPITAL SERVICES.

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(e) [42 U.S.C. 1396n note] Permitting Adjustment in Estimates to Take into Account Preadmission Screening Requirement.—In the case of a waiver under section 1915(c) of the Social Security Act for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act.

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SEC. 4745. [42 U.S.C. 1396a note] DEMONSTRATION PROJECTS TO STUDY THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS.

(a) Demonstration Projects.—

(1) In General.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirements for medicaid benefits for certain low-income indivduals.

(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

(2) Requirements.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that

(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act, for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragrpah (1) of section 1902(l) of such Act (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act), the project must require an emloyer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

(v) the project provides for coverage of benefits consistent with subsection (b); and

(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

(B) The Secretary may waive the requirements of clause (ii) of this paragraph with respect to those projects described in subparagraph (B) of paragraph (1).

(3) Permissible restrictions.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the Standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

(4) Extension of eligibility.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

(5) Waiver of requirements.—

(A) In general.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act) as may be required to provide for additional coverage of individuals under projects under this section.

(B) Nonwaivable provisions.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act or the Federal medical assistance percentage specified in section 1905(b) of such Act.

(b) Benefits.—

(1) In general.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act.

(2) Limits on benefits.—

(A) Required.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

(B) Permissible.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

(3) Use of utilization controls.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

(c) Premiums and Cost-Sharing.—

(1) None for those with income below the poverty line.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

(2) Limit for those with income above the poverty line.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

(3) Income determination.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act for individuals entitled to benefits under part A of title IV of such Act.

(d) Duration.—Each project under this section shall commence not later than July 1, 1991, and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

(e) Limits on Expenditures and Funding.—

(1) In general.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act to no more than $12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994.

(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

(2) No funding of current beneficiaries.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

(3) No increase in federal medical assistance percentage.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act) of such expenditures.

(f) Evaluation and Report.—

(1) Evaluations.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to

(A) access to, and costs of, health care,

(B) private health care insurance coverage, and

(C) premiums and cost-sharing.

(2) Reports.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than January 1, 1995.

(g) Definitions.—In this section:

(1) The term "income official poverty line" means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(2) The term "project" refers to a demonstration project under subsection (a).

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SEC. 4747. [42 U.S.C. 1396a note] DEMONSTRATION PROJECTS TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS.

(a) In General.—Not later than 3 months after the date of the enactment of this Act, the Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act, and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

(b) Services Available Under a Demonstration Project.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act shall be made available to individuals described in subsection (1) who receive services under a demonstration project under such paragraph.

(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

(A) general and preventative[7] medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

(B) prescription drugs, including drugs for the purposes of preventative health care services;

(C) counseling and social services;

(D) substance abuse treatment services (including services for multiple substances abusers);

(E) home care services (including assistance in carrying out activities of daily living);

(F) case management;

(G) health education services;

(H) respite care for caregivers;

(I) dental services; and

(J) diagnostic and laboratory services[8]

(c) Agreements With States.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act and shall terminate on the date that is 3 years after the date of commencement.

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[7] As in original. Probably should be "preventive".

[8] As in original. Period missing.

(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act.

(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act as the Secretary determines to be necessary to carry out the purpose of this section.

(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.

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SEC. 4751. [None assigned.] REQUIREMENTS FOR ADVANCED DIRECTIVES UNDER STATE PLANS FOR MEDICAL ASSISTANCE.

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(d) [42 U.S.C. 1396a note] PUBLIC EDUCATION CAMPAIGN.—

(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section, shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section, to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, add a page to the medicare handbook with respect to the provisions of this section.

SEC. 4752. [None assigned.] IMPROVEMENT IN QUALITY OF PHYSICIAN SERVICES.

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(d) [42 U.S.C. 1396a note] FOREIGN MEDICAL GRADUATE CERTIFICATION.—

(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER. The Secretary of Health and Human Services shall provide, in the identifier system established under section 1902(x) of the Social Security Act, that no foreign medical graduate (as defined in section 1886(H)(5)(D) of such Act) shall be issued an identifier under such system unless the individual—

(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

(C) has held a license from 1 or more States continuously since 1958.

(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.

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SEC. 4801. [None assigned.] TECHNICAL CORRECTIONS RELATING TO NURSING HOME REFORM.

(a) NURSE AIDE TRAINING AND COMPETENCY EVALUATION.—

(1) [42 U.S.C. 1396r note] NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

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(6) MODIFICATION OF NURSING FACILITY DEFICIENCY STANDARDS.—

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(B) [42 U.S.C. 1396r note] EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

(i) had its participation terminated under title XVIII of the Social Security Act or under the State plan under title XIX of such Act;

(ii) was subject to a denial of payment under either such title;

(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

(v) pursuant to State action, was closed or had its residents transferred.

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(b) PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW.—

(1) [42 U.S.C. 1396r note] NO COMPLIANCE ACTIONS BEFORE EFFECTIVE DATE OF GUIDELINES.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.

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(c) [42 U.S.C. 1396r note] ENFORCEMENT PROCESS.—The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act on the basis of the State's failure to meet the requirments of section 1919(h)(2) of such Act before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.

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(e) OTHER AMENDMENTS.

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(17) [42 U.S.C. 1396r note] PROVISIONS RELATING TO STAFFING REQUIREMENTS.—

(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security

Act and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act, and shall include in such study recommendations regarding appropriate minimum ratios.

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SEC. 5013. [None assigned.] CHILD SUPPORT ENFORCEMENT WAIVER.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall enter into an agreement with the State of Texas waiving (with respect to cases where a court has issued an order for child support) the following requirements under the State plan for child and spousal support that are described in subparagraphs (A) and (B) of section 454(6) of the Social Security Act, with respect to a project, based in the county of Bexar, of delinquency monitoring for child support enforcement:

(1) The submission of a written application by an individual requesting child support collection services.

(2) The payment of an application fee with respect to an application for such services.

(b) CONTENTS OF WAIVER AGREEMENT.—In the agreement between the Secretary and the State of Texas described in subsection (a), the waiver granted under such agreement shall provide the following:

(1) The waiver shall apply only with respect to the provision of child support collection services.

(2) Before the provision of any child support collection services, the organizational unit designated under section 454(3) of the Social Security Act (in this section referred to as the "State agency") shall provide written notification to each custodial parent of the right of such parent to refuse such services.

(3) The State shall ensure that, to the extent possible, each parent of the child on behalf of whom such services are provided (regardless of whether such parent is a custodial parent) is to receive written notice at the time such services are provided, explaining—

(A) the legal rights of parents with respect to the child support collection services provided; and

(B) the responsibilities of the State agency in providing such child support collection services (including the monitoring of delinquent child support payments).

(4) A case record shall be deemed to have been established by the State agency upon notification of a custodial parent of the option to receive the child support enforcement services described in this subsection.

(5) Any period of enforcement by the State agency under this section with respect to the collection of delinquent child support payments shall be deemed to begin on the first day of any such delinquency.

(d)[9] STUDY AND REPORT.—

(1) STUDY REQUIRED.—As a condition precedent to granting the waiver described in subsection (a), the State agency shall agree to conduct a study of the cost-effectiveness to the Federal Government and to the State of Texas of the monitoring of delinquent child support payments under the State plan under section 454 of the Social Security Act.

(2) CONDUCT OF STUDY.—

(A) IN GENERAL.—The study required by paragraph (1) shall be conducted in accordance with the criteria established by the Secretary in accordance with subparagraph (B).

(B) CRITERIA.—Not later than February 1, 1991, the Secretary shall establish the criteria required by subparagraph (A), in consultation with—

(i) 1 or more representatives of organizations representing child support administrators;

(ii) 1 or more representatives of the General Accounting Office;

(iii) 1 or more representatives of the State of Texas; and

(iv) such other individuals or organizations with experience in the evaluation of child support programs, as the Secretary may designate.

(3) REPORT.—Not later than 3 months after the expiration of the waiver described in subsection (a), the State agency shall submit to the Secretary and to the Congress a report that includes the findings of the study required by this subsection.

(e)[10] DURATION OF WAIVER.—The waiver described in subsection (a) shall be effective for not more than 2 years.

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[9] As in original. Possibly should be subsection (c).

[10] As in original. Possibly should be subsection (d).

(f)[11] MATCHING PAYMENTS.—

(1) GENERAL EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out child support enforcement programs with respect to which the waiver described in subsection (a) applies, the Secretary shall pay the State an amount equal to the lesser of—

(A) 66 percent of such expenditures; or

(B) $500,000.

(2) STUDY EXPENDITURES.—In lieu of any payment under section 455 of the Social Security Act with respect to expenditures of the State of Texas to carry out the study required by subsection (d), the Secretary shall pay the State an amount equal to 66 percent of such expenditures.

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SEC. 5041. [None assigned.] NOTIFICATION OF CERTAIN INDIVIDUALS ELIGIBLE TO RECEIVE RETROACTIVE BENEFITS.

In notifying individuals of their eligibility to receive retroactive supplemental security income benefits as a result of Sullivan v. Zebley, 110 S. Ct. 2658 (1990), the Secretary shall include written notice, in language that is easily understandable, explaining—

(1) the 6-month limitation on the exclusion from resources under section 1613(a)(7) of the Social Security Act (42 U.S.C. 1328b(a)(7);

(2) the potential effects under title XVI of the Social Security Act, attributable to the receipt of such payment, including—

(A) potential discontinuation of eligibility; and

(B) potential reductions in the amount of benefits;

(3) the possibility of establishing a trust account that would not be considered as income or resources for the purposes of such title if the trust met certain conditons; and

(4) that legal assistance in establishing such a trust may be available through legal referral services offered by a State or local bar association, or through the Legal Services Corporation.

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SEC. 5064. [None assigned.] STUDY OF JOBS PROGRAMS OPERATED BY INDIAN TRIBES AND ALASKA NATIVE ORGANIZATIONS.

(a) IN GENERAL.—Within 180 days after the date of the enactment of this Act, the Comptroller General of the United States (in this section referred to as the "Comptroller") shall conduct a study of the implementation of section 482(i) of the Social Security Act (42 U.S.C. 681(i)) relating to job opportunities and basic skills training programs (in this section referred to as "JOBS programs") operated by Indian tribes and Alaska Native organizations (as defined in paragraph (5) of such section 482(i)).

(b) REQUIREMENTS FOR STUDY.—In conducting the study described in subsection (a), the Comptroller shall—

(1) identify any problems associated with the implementation of section 481(i) of the Social Security Act; and

(2) assess (to the extent practicable) the effectiveness of the JOBS programs operated by Indian tribes and Alaska Native organizations.

(c) REPORT.—Upon completion of the study described in subsection (a), the Comptroller shall submit a report to the appropriate committees of the Congress that includes—

(1) a summary of the findings of the study; and

(2) recommendations with respect to proposed legislation or changes in administrative policy to improve the effectiveness of JOBS programs conducted pursuant to section 481(i) of the Social Security Act.

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SEC. 5103. [None assigned.] REPEAL OF SPECIAL DISABILITY STANDARD FOR WIDOWS AND WIDOWERS.

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(e) [42 U.S.C. 402 note] EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section (other than paragraphs (1) and (2)(C) of subsection (c)) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by

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[11] As in original. Possibly should be subsection (e).

subsection (c)(1) shall apply with respect to medical assistance provided after December 1990. The amendments made by subsection (c)(2)(C) shall apply with respect to items and services furnished after December 1990.

(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

(A) is entitled to disability insurance benefits under section 223 of the Social Security Act for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act, or State supplementary payments of the type referred to in section 1616(a) of such Act (or payments of the type described in section 212(a) of Public Law 93-66) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93-66), for January 1991,

(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990, and

(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.

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SEC. 5105. [None assigned.] REPRESENTATIVE PAYEE REFORMS.

(a) IMPROVEMENTS IN THE REPRESENTATIVE PAYEE SELECTION AND RECRUITMENT PROCESS.

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(2) PROCEDURES FOR SELECTING REPRESENTATIVE PAYEES.—

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(B) [42 U.S.C. 405 note] REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS.—As soon as practicable after the date of the eneactment of this Act, the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasiblity of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act, of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(3) PROVISION FOR COMPENSATION OF QUALIFIED ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES.—

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(B) [42 U.S.C. 405 note] STUDIES AND REPORTS.—

(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A).

(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.

(4) [42 U.S.C. 405 note] STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.

(5) [42 U.S.C. 405 note] EFFECTIVE DATES.—

(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) shall take effect July 1, 1991, and shall apply only with respect to—

(i) certifications of payment of benefits under title II of the Social Security Act to representative payees made on or after such date; and

(ii) provisions for payment of benefits under title XVI of such Act to representative payees made on or after such date.

(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.

(b) IMPROVEMENTS IN RECORDKEEPING AND AUDITING REQUIREMENTS.—

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(2) [42 U.S.C. 405 note] STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES.—

(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act, which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

(ii) periodic, random audits of records which would be kept under such a system, in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term "high-risk representative payee" means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

(iii) is a creditor of such individual, or

(iv) is in such other category of payees as the Secretary may determine appropriate.

(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).

(3) [42 U.S.C. 405 note] DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES.—

(A) In general.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

(B) Listing of addresses of multiple benefit recipients.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II, benefits under title XVI, or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

(C) Appropriate state agency.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

(D) Report.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

(E) State.—For purposes of this paragraph, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

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(d) Reports to the Congress.—

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(3) Feasibility study regarding involvement of department of veterans affairs.—As soon as practicable after the date of the enactment of this Act, the Secretary of Health and Human Services, in cooperation with the Secretary of Veterans Affairs, shall conduct a study of the feasibility of designating the Department of Veterans Affairs as the lead agency for purposes of selecting, appointing, and monitoring representative payees for those individuals who receive benefits paid under title II or XVI of the Social Security Act and benefits paid by the Department of Veterans Affairs. Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the results of such study, together with any recommendations.

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SEC. 5108. [42 U.S.C. 902 note] DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS.

(a) In General.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to implement the accountability procedures described in subsection (b) in each of not fewer than 3 telephone service centers operated by the Social Security Administration. Telephone service centers shall be selected for implementation of the accountability procedures so as to permit a thorough evaluation of such procedures as they would operate in conjunction with the service technology most recently employed by the Social Security Administration. Each such demonstration project shall commence not later than 180 days after the date of the enactment of this Act and shall remain in operation for not less than 1 year and not more than 3 years.

(b) Accountability Procedures.—

(1) In general.—During the period of each demonstration project developed and carried out by the Secretary of Health and Human Services with respect to a telephone service center pursuant to subsection (a), the Secretary shall provide for the application at such telephone service center of accountability procedures consisting of the following:

(A) In any case in which a person communicates with the Social Security Administration by telephone at such telephone service center and provides in such communication his or her name, address, and such other identifying information as the Secretary determines necessary and appropriate for purposes of this subparagraph, the Secretary must thereafter promptly provide such person a written receipt which sets forth—

(i) the name of any individual representing the Social Security Administration with whom such person has spoken in such communication,

(ii) the date of the communication;

(iii) a description of the nature of the communication,

(iv) any action that an individual representing the Social Security Administration has indicated in the communication will be taken in response to the communication, and

(v) a description of the information or advice offered in the communication by an individual representing the Social Security Administration.

(B) Such person must be notified during the communication by an individual representing the Social Security Administration that, if adequate identifying information is provided to the Administration, a receipt described in subparagraph (A) will be provided to such person.

(C) A copy of any receipt required to be provided to any person under subparagraph (A) must be—

(i) included in the file maintained by the Social Security Administration relating to such person, or

(ii) if there is no such file, otherwise retained by the Social Security Administration in retrievable form until the end of the 5-year period following the termination of the project.

(2) EXCLUSION OF CERTAIN ROUTINE TELEPHONE COMMUNICATIONS.—The Secretary may exclude from demonstration projects carried out pursuant to this section routine telephone communications which do not relate to potential or current eligibility or entitlement to benefits.

(c) REPORT.—

(1) IN GENERAL[12]—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report on the progress of the demonstration projects conducted pursuant to this section, together with any related data and materials which the Secretary may consider appropriate. The report shall be submitted not later than 90 days after the termination of the project.

(2) SPECIFIC MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall—

(A) assess the costs and benefits of the accountability procedures,

(B) identify any major difficulties encountered in implementing the demonstration project, and

(C) assess the feasibility of implementing the accountability procedures on a national basis.

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SEC. 5110. [42 U.S.C. 902 note] TELEPHONE ACCESS TO THE SOCIAL SECURITY ADMINISTRATION.

(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Administration at the level of access generally available as of September 30, 1989.

(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

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[12] As in original. Probably should be "GENERAL.".

(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later[13] 180 days after such date.

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SEC. 5117. [None assigned.] CONSOLIDATION OF OLD METHODS OF COMPUTING PRIMARY INSURANCE AMOUNTS.

(a) CONSOLIDATION OF COMPUTATION METHODS.—

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(4) [42 U.S.C. 403 note] EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted, except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.

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SEC. 5119. [None assigned.] ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

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(e) [42 U.S.C. 403 note] EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) APPLICATION REQUIREMENT.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).

SEC. 5120. [42 U.S.C. 1310 note] VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECT.—

(1) IN GENERAL.—Pursuant to section 505 of the Social Security Disability Amendments of 1980, the Secretary of Health and Human Services shall develop and carry out under this section demonstration projects in each of not fewer than three States. Each such demonstration project shall be designed to assess the advantages and disadvantages of permitting disabled beneficiaries (as defined in paragraph (3)) to select, from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activity. Each such

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[13] As in original; "than" should be inserted.

demonstration project shall commence as soon as practicable after the date of the enactment of this Act and shall remain in operation until the end of fiscal year 1993.

(2) SCOPE AND PARTICIPATION.—Each demonstration project shall be of sufficient scope and open to sufficient participation by disabled beneficiaries so as to permit meaningful determinations under subsection (b).

(3) DISABLED BENEFICIARY.—For purposes of this section, the term "disabled beneficiary" means an individual who is entitled to disability insurance benefits under section 223 of the Social Security Act or benefits under section 202 of such Act based on such individual's own disability.

(b) MATTERS TO BE DETERMINED.—In the course of such demonstration project conducted under this section, the Secretary shall determine the following:

(1) the extent to which disabled beneficiaries participate in the process of selecting providers of rehabilitation services, and their reasons for participating or not participating;

(2) notable characteristics of participating disabled beneficiaries (including their impairments), classified by the type of provider selected;

(3) the various needs for rehabilitation demonstrated by participating disabled beneficiaries, classified by the type of provider selected;

(4) the extent to which providers of rehabilitation services which are not agencies or instrumentalities of States accept referrals of disabled beneficiaries under procedures in effect under section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for such services and the most effective way of reimbursing such providers in accordance with such provisions;

(5) the extent to which providers participating in the demonstration projects enter into contracts with third parties for services and the types of such services;

(6) whether, and if so the extent to which, disabled beneficiaries who select their own providers of rehabilitation services are more likely to engage in substantial gainful activity and thereby terminate their entitlement under section 202 or 223 of the Social Security Act than those who do not;

(7) the cost effectiveness of permitting disabled beneficiaries to select their providers of vocational rehabilitation services, and the comparative cost effectiveness of different types of providers; and

(8) the feasibility of establishing a permanent national program for allowing disabled beneficiaries to choose their own qualified vocational rehabilitation provider and any additional safeguards which would be necessary to assure the effectiveness of such a program.

(c) PROCEDURAL REQUIREMENTS.—

(1) SELECTION OF PARTICIPANTS.—The Secretary shall select for participation in each demonstration project under this section disabled beneficiaries for whom there is a reasonable likelihood that rehabilitation services provided to them will result in performance by them of substantial gainful activity for a continuous period of nine months prior to termination of the project.

(2) SELECTION OF PROVIDERS OF REHABILITATION SERVICES.—The Secretary shall select qualified rehabilitation agencies to serve as providers of rehabilitation services in the geographic area covered by each demonstration project conducted under this section. The Secretary shall make such selection after consultation with disabled individuals and organizations representing such individuals. With respect to each demonstration project, the Secretary may approve on a case-by-case basis additional qualified rehabilitation agencies from outside the geographic area covered by the project to serve particular disabled beneficiaries.

(3) REIMBURSEMENT OF PROVIDERS.—

(A) Except as provided in subparagraph (B), providers of rehabilitation services under each demonstration project under this section shall be reimbursed in accordance with the procedures in effect under the provisions of section 222(d) of the Social Security Act as of the date of the enactment of this Act relating to reimbursement for services provided under such section.

(B) The Secretary may contract with providers of rehabilitation services under each demonstration project under this section on a fee-for-service basis in order to—

(i) conduct vocational evaluations directed at identifying those disabled beneficiaries who have reasonable potential for engaging in substantial gainful activity and thereby terminating their entitlement to benefits under section 202 or 223 of the Social Security Act if provided with vocational rehabilitation services as participants in the project, and

(ii) develop jointly with each disabled beneficiary so identified an individualized, written rehabilitation program.

(C) Each written rehabilitation program developed pursuant to subparagraph (B)(ii) for any participant shall include among its provisions—

(i) a statement of the participant's rehabilitation goal,

(ii) a statement of the specific rehabilitation services to be provided and of the identity of the provider to furnish such services,

(iii) the projected date for the initiation of such services and their anticipated duration, and

(iv) objective criteria and an evaluation procedure and schedule for determining whether the stated rehabilitation goal is being achieved.

(d) REPORTS.—The Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an interim written report on the progress of the demonstration projects conducted under this section not later than April 1, 1992, together with any related data and materials which the Secretary considers appropriate. The Secretary shall submit a final written report to such Committees addressing the matters to be determined under subsection (b) not later than April 1, 1994.

(e) STATE.—For purposes of this section, the term "State" means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).

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SEC. 7201. [5 U.S.C. 552a note] COMPUTER MATCHING OF FEDERAL BENEFITS INFORMATION AND PRIVACY PROTECTION.

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(c) LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT.—Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2, shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of—

(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

(2) 30 days after the date of publication of guidance under section 2(b).

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SEC. 8051. [None assigned.] USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

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(c) [38 U.S.C. 3117 note] NOTICE TO CURRENT BENEFICIARIES.—(1) The Secretary of Veterans Affairs shall notify individuals who (as of the date of the enactment of this Act) are applicants for or recipients of the benefits described in subsection (c) (other than paragraph (3)) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished to the Secretary by such applicants and recipients may be compared with information obtained by the Secretary from the Secretary of Health and Human Services or the Secretary of the Treasury under clause (viii) of section 6103(l)(7)(D) of the Internal Revenue Code of 1986 (as added by subsection (a)).

(2) Notification under paragraph (1) shall be made not later than 90 days after the date of the enactment of this Act.

(3) The Secretary of Veterans Affairs may not obtain information from the Secretary of Health and Human Services or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (as added by subsection (a)) until notification under paragraph (1) is made.

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SEC. 11115. [None assigned.] EXCLUSION FROM INCOME AND RESOURCES OF EARNED INCOME TAX CREDIT UNDER TITLES IV, XVI, AND XIX OF THE SOCIAL SECURITY ACT.

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(c) [42 U.S.C. 1396a note] EXCLUSIONS UNDER TITLE XIX.—Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code (relating to advance payment of earned income credit).

(d) [42 U.S.C. 602 note] AFDC WAIVER OF OVERPAYMENT.—For the purposes of section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)), a State agency designated under a State plan under section 402(a)(3) of such Act may waive any overpayment of aid that resulted from the receipt by a family of a refund of Federal income taxes by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) or any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit) during the period beginning on January 1, 1990, and ending on December 31, 1990.

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SEC. 13301. [None assigned.] OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) [2 U.S.C. 632 note] EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS.—Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

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SEC. 13302. [2 U.S.C. 632 note] PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL.—It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment—

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration), (B) such net increase, together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and (C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and (B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under consideration), (B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000 and (C) such legislation under consideration does not provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION.—In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS.—For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means—

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to secion 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would beome effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

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SEC. 13306. [None assigned.] EFFECTIVE DATE.

Sections 13301, 13302, and 13303 and any amendments made by such sections shall apply with respect to fiscal years beginning on or after October 1, 1990. Section 13304 shall be effective for annual reports of the Board of Trustees issued in or after calendar year 1991.

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[*Internal References.*—S.S. Act §§203(a), 215(a), (c), (f) and (i), 1842(b) and (f), and 1886(d) cite the Omnibus Budget Reconciliation Act of 1990 and S.S. Act titles II, IV, XI and Part B, §§1106, 1110, title XVI, 1631, title XVIII and Part B, 1816, 1834, 1842, 1848, 1864, 1867, 1876, 1882, 1883, 1889 catchlines and §§202(f), 203(a), 205(j), 213(c), 215(a), (c), (d), (f) and (i), 216(h), 226(e), 482(i), 1137(b), 1613(a), 1631(a), 1819(b) and (f), 1833(i) and (r), 1834(a) and (b), 1842(b), 1848(c), (d), (f) and (j), 1861(s), 1862(b), 1866(a) and (f), 1869(b), 1876(c), 1886(a), (b) and (d), and 1891(a) have footnotes referring to P.L. 101-508.]

P.L. 101-517, Approved November 5, 1990 (104 Stat. 2190)

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1991

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SOCIAL SECURITY ADMINISTRATION

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LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, not more than $4,316,974,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: *Provided*, [42 U.S.C. 1383 note] That travel expense payments under section 1631(h) of such Act for travel to hearings may be made only when travel of more than seventy-five miles is required: *Provided further*, That $150,000,000 of the foregoing amount shall be apportioned for use only to the extent necessary to process workloads not anticipated in the budget estimates, for automation projects and their impact on the work force, and to meet mandatory increases in costs of agencies or organizations with which agreements have been made to participate in the administration of titles XVI and XVIII and section 221 of the Social Security Act, and after maximum absorption of such costs within the remainder of the existing limitation has been achieved: *Provided further*, That none of the funds appropriated by this Act may be used for the manufacture, printing, or procuring of social security cards, as provided in section 205(c)(2)(D) of the Social Security Act, where paper and other materials used in the manufacture of such cards are produced, manufactured, or assembled outside of the United States.

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[*Internal References.*—S.S. Act §205(c) and §1631(h) catchline have footnotes referring to P.L. 101-517.]

APPENDIX A

1990 Cost-of-Living Increase and Other Determinations[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—(1) A 4.7 percent cost-of-living increase in benefits under title II (section 215(i)) of the Social Security Act (the Act);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1990 to $386 for an eligible individual, $579 for an eligible individual with an eligible spouse, and $193 for an essential person (section 1617 of the Act);

(3) The average of the total wages for 1988 to be $19,334.04;

(4) The Social Security contribution and benefit base to be $50,400 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990;

(5) The amount of earnings a person must have to be credited with a quarter of coverage in 1990 to be $520;

(6) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1990 to be $780 for beneficiaries age 65 through 69 and $570 for beneficiaries under age 65;

(7) The "old-law" contribution and benefit base to be $37,500 for 1990.

We also describe the computation of benefits for a worker and the worker's family who first become eligible for benefits in 1990, and the computation of the old-age, survivors, and disability insurance (OASDI) fund ratio used to determine whether the automatic increase in benefits under title II of the Act is affected by the "stabilizer" provision.

Finally, we are publishing a table of OASDI "special minimum" benefit amounts. This table provides the range of primary insurance amounts and the corresponding maximum family benefits under the "special minimum" benefit provision, as revised to reflect the automatic benefit increase. These benefits are payable to certain individuals with long periods of relatively low earnings.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Act to publish within 45 days after the close of the third calendar quarter of 1989 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1988 (section 215(i)(2)(C)(iii)) and the OASDI fund ratio for 1989 (section 215(i)(2)(C)(iii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1990 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1990 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1990 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1990 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1990 (section 203(a)(2)(C)).

Cost-of-Living Increases

General. The cost-of-living increase is 4.7 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefis[2] will increase by 4.7 percent beginning with the December 1989 benefits, which are payable on January 3, 1990. The kinds of benefits payable to individuals entitled under this program are old-age, disability, wife's, husband's, child's, widow's, widower's, mother's, father's, and parent's insurance benefits. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 4.7 percent effective for payments made for the month of January 1990 but paid on December 29, 1989. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1990 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12.

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1989 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is therefore required to increase benefits, effective with

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[1] This material was published in the Federal Register on October 31, 1989, at 54 FR 45801.

[2] As in original.

December 1989, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1989, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1988 through the third quarter of 1989. Automatic benefit increases may be modified by a "stabilizer" provision under certain adverse financial conditions that are described in the section on the OASDI fund ratio. The December 1989 benefit increase is not affected by this provision.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1988, was: for July 1988, 117.2; for August 1988, 117.7; and for September 1988, 118.5. The arithmetic mean for this calendar quarter is 117.8 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1989, was: for July 1989, 123.2; for August 1989, 123.2; and for September 1989, 123.6. The arithmetic mean for this calendar quarter is 123.3. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1989, exceeds that for the calendar quarter ending September 30, 1988, by 4.7 percent, a cost-of-living benefit increase of 4.7 percent is effective for benefits under title II of the Act beginning December 1989.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1990, benefits will increase 4.7 percent beginning with benefits for December 1989 which will be received January 3, 1990. In the case of first eligibility after 1989, the 4.7 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 4.7 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1989); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1990, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits, the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other porvisions[3] described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the attached table shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 4.7 percent benefit increase.

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $151.90 for an individual under sections 227 and 228 of the Act is increased by 4.7 percent to obtain the new amount of $159.00. The present monthly benefit amount of $76.10 for a spouse under section 227 is increased by 4.7 percent to $79.60.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 4.7 percent effective January 1990. Therefore, the yearly Federal SSI benefit amount of $4,416 for an eligible individual, $6,636 for an eligible individual with an eligible spouse, and $2,208 for an essential person, which became effective January 1989, are increased, effective January 1990, to $4,632, $6,948, and $2,316 respectively after rounding. The corresponding monthly amounts for 1990 are determined by dividing the yearly amounts by 12, giving $386, $579, and $193, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

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[3] As in original.

Average of the Total Wages for 1988

The determination of the average wage figure for 1988 is based on the 1987 average wage figure of $18,426.51 announced in the **Federal Register** on October 31, 1988 (53 FR 43932), along with the percentage increase in average wages from 1987 to 1988 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $17,416.59 and $18,274.38 for 1987 and 1988, respectively. To determine an average wage figure for 1988 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1987 average wage figure of $18,426.51 by the percentage increase in average wages from 1987 to 1988 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1988 = $18,426.51 × $18,274.38 ÷ $17,416.59 = $19,334.04. Therefore, the average wage for 1988 is determined to be $19,334.04.

Contribution and Benefit Base

General. The contribution and benefit base is $50,400 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula, the contribution and benefit base for 1990 shall be equal to the 1989 base of $48,000 multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year 1988 to (2) the average amount of those wages for the calendar year 1987. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1987 was previously determined to be $18,426.51. The average wage for calendar year 1988 has been determined to be $19,334.04 as stated herein.

Amount. The ratio of the average wage for 1988, $19,334.04, compared to that for 1987, $18,426.51, is 1.0492513. Multiplying the 1989 contribution and benefit base of $48,000 by the ratio 1.0492513 produces the amount of $50,364.06, which must then be rounded to $50,400. Accordingly, the contribution and benefit base is determined to be $50,400 for 1990.

Quarter of Coverage Amount

General. The 1990 amount of earnings required for a quarter of coverage is $520. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Individuals generally must have self-employment income of at least $400 in a taxable year in order to be credited with any quarters of coverage.

Computation. Under the prescribed formula, the quarter of coverage amount for 1990 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar 1988 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1988 has been determined to be $19,334.04 as stated herein.

Quarter of Coverage Amount. The ratio of the average wage for 1988, $19,334.04, compared to that for 1976, $9,226.48, is 2.0954947. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.0954947 produces the amount of $523.87, which must then be rounded to $520. Accordingly, the quarter of coverage amount is determined to be $520 for 1990.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1989 was determined by this formula to be $740. Under the formula, the exempt amount for 1990 shall be the 1989 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1988 to (2) the average amount of those wages for calendar year 1987. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1988, $19,334.04, compared to that for 1987, $18,426.51, is 1.0492513.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1989 retirement earnings test monthly exempt amount of $740 by the ratio of 1.0492513 produces the amount of $776.45. This must then be rounded to $780. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $780 for 1990. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $9,360.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $540 for 1989. The formula provides that the exempt amount for 1990 shall be the 1989 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1988 to (2) the average amount of those wages for calendar year 1987. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. Average wages for this purpose are determined in the same way as for the contribution and benefit base. Therefore, the ratio of the average wages for 1988, $19,334.04, compared to that of 1987, $18,426.51, is 1.0492513.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1989 retirement earnings test monthly exempt amount of $540 by the ratio 1.0492513 produces the amount of $566.60. This must then be rounded to $570. The retirment[4] earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $570 for 1990. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $6,840.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increases in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

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[4] As in original.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1990, we divide the average of the total wages for 1988, $19,334.04, by the average of the total wages for each year prior to 1988 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1990.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1990 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1988, $19,334.04, and for 1977, $9,779.44. These results were then rounded to the nearest dollar. For 1990, the ratio is 1.9770089. Multiplying the 1979 amounts of $180 and $1,085 by 1.9770089 produces the amounts of $355.86 and $2,145.05. These must then be rounded to $356 and $2,145. Accordingly, the portions of the average indexed monthly earnings to be used in 1990 are determined to be the first $356, the amount between $356 and $2,145, and the amount over $2,145.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1990, or who die in 1990 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $356 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $356 and through $2,145, plus

(c) 15 percent of the average indexed monthly earnings over $2,145.

This amount is then rounded to the next multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **FEDERAL REGISTER** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1990 are obtained by multiplying the 1979 amounts by the ration[5] between the average of the total wages for 1988, $19,334.04, and the average for 1977 $9,779.44. This amount is then rounded to the nearest dollar. For 1990, the ratio is 1.9770089. Multiplying the amounts of $230, $332, and $433 by 1.9770089 produces the amounts of $454.71, $656.37, and $856.04. These amounts are then rounded to $455, $656, and $856. Accordingly, the portions of the primary insurance amounts to be used in 1990 are determined to be the first $455, the amount between $455 and $656, the amount between $656 and $856, and the amount over $856.

Consequently, for the family of a worker who becomes age 62 or dies in 1990, the total amount of benefits payable to them will be computed so that it does not exceed:

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[5] As in original.

(a) 150 percent of the first $455 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $455 through $656, plus

(c) 134 percent of the worker's primary insurance amount over $656 through $856, plus

(d) 175 percent of the worker's primary insurance amount over $856.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

"Old-Law" Contribution and Benefit Base

General. The 1990 "old-law" contribution and benefit base is $37,500. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1989 base multiplied by the ratio of (1) the average amount, per employee, of total wages for the calendar year of 1988 to (2) the average amount of those wages for the calendar year of 1987. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages. The average wage for calendar year 1987 was previously determined to be $18,426.51. The average wage for calendar year 1988 has been determined to be $19,334.04, as stated herein.

Amount. The ratio of the average wage for 1988, $19,334.04, compared to that for 1987, $18,426.51, is 1.0492513. Multiplying the 1989 "old-law" contribution and benefit base amount of $35,700 by the ratio of 1.0492513 produces the amount of $37,458.27 which must then be rounded to $37,500. Accordingly, the "old-law" contribution and benefit base is determined to be $37,500 for 1990.

OASDI Fund Ratio

General. Section 215(i) of the Act was amended by section 112 of Public Law 98-21, the Social Security Amendments of 1983, to include a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified level, the automatic benefit increase is equal to the lesser of (1) the increase in average wages or (2) the increase in prices. The threshold level specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1989 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1989, including advance tax transfers for January 1989, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1989, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1989 (including advance tax transfers for January 1989) equaled $134,428 million, and the expenditures are estimated to be $235,674 million. Thus, the OASDI fund ratio for 1989 is 57.0 percent, which exceeds the applicable threshold of 20.0 percent. As a result, the "stabilizer" provision does not affect the benefit increase for December 1989.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802-13.805, and 13.807 Social Security Programs.)

Dated: October 26, 1989.

Louis W. Sullivan,
Secretary of Health and Human Services.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1988	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1989	Special minimum family benefit payable for Dec. 1989
$21.00	11	$21.90	$33.00
41.70	12	43.60	65.70
62.70	13	65.60	98.70
83.80	14	87.40	131.30
104.40	15	109.30	164.00
125.40	16	131.20	197.20
146.30	17	153.10	229.90
167.20	18	175.00	262.70
188.10	19	196.90	295.50
208.80	20	218.60	328.20
230.00	21	240.80	361.30
250.80	22	262.50	394.00
271.90	23	284.60	427.30
292.70	24	306.40	460.00
313.50	25	328.20	492.50
334.60	26	350.30	525.90
355.50	27	372.20	558.60
376.30	28	393.90	591.20
397.10	29	415.70	624.20
418.00	30	437.60	656.80

APPENDIX B

Revised Determination of 1990 Contribution and Benefit Bases[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) The Social Security contribution and benefit base to be $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990;

(2) The "old-law" contribution and benefit base to be $38,100 for 1990.

The above determinations are in accordance with the requirements of section 10208 of Public Law 101-239 and supersede those announced in the **Federal Register** on October 31, 1989 (54 FR 45801).

SUPPLEMENTARY INFORMATION: Section 230(c) of the Social Security Act (the Act) provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. This formula uses the increase (if any) in the average of the total wages as the basis for determining the new contribution and benefit base. The average of the total wages is also used to index other program amounts, such as the earnings required for a quarter of coverage.

Under current regulations, the average of the total wages is calculated from individuals' wages subject to income tax, as reported on W-2 forms filed by employers. Contributions to certain qualified cash or deferred arrangements are not subject to income tax (but distributions from such arrangements may be taxable). Such contributions are known as deferred compensation amounts and have been treated as wages subject to Social Security taxes since 1984.

Because the deferred compensation amounts are not subject to income taxes, the data used to calculate the average of the total wages understate wages by such amounts. As a result, the annual adjustments in all the wage-indexed program amounts have not reflected the effects that year-to-year changes in deferred compensation amounts have on the average of the total wages. Section 10208 of Public Law 101-239, enacted December 19, 1989, provides for the inclusion of deferred compensation amounts in the determination of the average of the total wages. This permits the effects of year-to-year changes in deferred compensation amounts on the annual increases in the average of the total wages to be reflected in future adjustments of wage-indexed program amounts. These effects will begin with changes in such program amounts from calendar year 1992 to calendar year 1993.

Section 10208 of Public Law 101-239 also provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule is used to determine the bases for 1990, and will be used to determine the bases for 1991 and 1992.

Under the transitional rule, the contribution and benefit base for 1990 will reflect the effect of an additional increase of 2 percentage points in average wages, over and above the previously determined average-wage increase announced earlier this year. The additional increase results in the newly determined contribution and benefit base of $51,300 for 1990.

The transitional rule for 1991 and 1992 provides a smooth transition to the revised measure of the average of the total wages, which takes account of the deferred compensation amounts.

As a result of section 10208 of Public Law 101-239, both the contribution and benefit base and the "old-law" contribution and benefit base for 1990, as published in the **Federal Register** on October 31, 1989, have been superseded, and are revised as shown below.

Average of the Total Wages Under the Transitional Rule

General

For purposes of determining the 1990 contribution and benefit base and the 1990 "old-law" contribution and benefit base, the new statute provides a deemed average of the total wages for 1988.

Computation

The average of the total wages for 1988 is deemed to be equal to the amount announced in the **Federal Register** on October 31, 1989, plus 2 percent of the average wage amount announced for 1987, as provided by the statute under the transitional rule.

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[1] This material was published in the **Rederal Register** on December 29, 1989, at 54 FR 53751.

Amount

The average wage amount announced for 1988 in the **Federal Register** on October 31, 1989 (54 FR 45801) was $19,334.04. The average wage amount announced for 1987 in the **Federal Register** on October 31, 1988 (53 FR 43932) was $18,426.51. Two percent of $18,426.51 is $368.53, and the sum of this amount and $19,334.04 is $19,702.57. Therefore, the deemed average wage for 1988 for the purposes described above is $19,702.57.

Contribution and Benefit Base

General

The contribution and benefit base is $51,300 for remuneration paid in 1990 and self-employment income earned in taxable years beginning in 1990.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation

Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. Under the prescribed formula as modified by Public Law 101-239, the contribution and benefit base for 1990 shall be equal to the 1989 base of $48,000 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1988 to (2) the average amount of total wages for the calendar year 1987. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 contribution and benefit base of $48,000 by the ratio 1.0692513 produces the amount of $51,324.06, which must then be rounded to $51,300. Accordingly, the contribution and benefit base is determined to be $51,300 for 1990.

"Old-Law" Contribution and Benefit Base

General

The 1990 "old-law" contribution and benefit base is $38,100. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments, and as it has been modified by Public Law 101-239.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments. Under the formula as modified by Public Law 101-239, the "old-law" contribution and benefit base shall be the "old-law" 1989 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1988 to (2) the average amount of total wages for the calendar year of 1987. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Average Wages

The average wage for calendar year 1987 was previously determined to be $18,426.51. The deemed average wage for calendar year 1988 has been determined to be $19,702.57 as stated herein.

Amount

The ratio of the deemed average wage for 1988, $19,702.57, compared to that for 1987, $18,426.51, is 1.0692513. Multiplying the 1989 "old-law" contribution and benefit base amount of $35,700 by the ratio of 1.0692513 produces the amount of $38,172.27 which must then be rounded to $38,100. Accordingly, the "old-law" contribution and benefit base is determined to be $38,100 for 1990.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.805 Social Security—Survivor's Insurance.)

Dated: December 22, 1989.

Louis W. Sullivan,
Secretary of Health and Human Services.

PROVISIONS AFFECTING SOCIAL SECURITY PROGRAMS

APPENDIX C

1991 Cost-of-Living Increase and Other Determinations[1]

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—(1) A 5.4 percent cost-of-living increase in benefits under title II, effective for December 1990 (the Old-Age, Survivors, and Disability Insurance (OASDI) fund ratio, determined to be 74.7 percent for 1990, does not affect this cost-of-living increase);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1991 to $407 for an eligible individual, $610 for an eligible individual with an eligible spouse, and $204 for an essential person;

(3) The average of the total wages for 1989 to be $20,099.55;

(4) The amount of earnings a person must have to be credited with a quarter of coverage in 1991 to be $540;

(5) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1991 to be $810 for beneficiaries age 65 through 69 and $590 for beneficiaries under age 65;

(6) The "bend points" used in the benefit formula for workers who become eligible for benefits in 1991 and in the formula for computing maximum family benefits;

(7) The deemed average wages total for 1989 to be $20,486.23;

(8) The Social Security contribution and benefit base to be $53,400 for remuneration paid in 1991 and self-employment income earned in taxable years beginning in 1991; and

(9) The "old-law" contribution and benefit base to be $39,600 for 1991.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Social Security Act (the Act) to publish within 45 days after the close of the third calendar quarter of 1990 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1989 (section 215(i)(2)(C)(ii)) and the OASDI fund ratio for 1990 (section 215(i)(2)(C)(ii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1991 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1991 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1991 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1991 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1991 (section 203(a)(2)(C)).

OASDI Fund Ratio

General. Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in average wages or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1990 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1990, including advance tax transfers for January 1990, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1990, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASI and DI Trust Funds at the beginning of 1990 (including advance tax transfers for January 1990) equaled $188,864 million, and the expenditures are estimated to be $252,906 million. Thus, the OASDI fund ratio for 1990 is 74.7 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1990. Although the OASDI fund ratio exceeds the 32.0 percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

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[1] This material was published in the **Federal Register** on October 31, 1990, at 55 FR 45856.

Cost-of-Living Increases

General. The cost-of-living increase is 5.4 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will increase by 5.4 percent beginning with the December 1990 benefits, which are payable on January 3, 1991. This increase is unaffected by the stabilizer provision, as described above. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 5.4 percent effective for payments made for this month of January 1991 but paid on December 31, 1990. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1991 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12. (The stabilizer provision does not affect SSI payment levels.)

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1990 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1990, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1990, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1989 through the third quarter of 1990. The December 1990 benefit increase is not affected by the stabilizer provision because the OASDI fund ratio for 1990 exceeds the 20.0 percent threshold fixed by statute.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1989, was: For July 1989, 123.2; for August 1989, 123.2; and for September 1989, 123.6. The arithmetic mean for this calendar quarter is 123.3 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1990, was: For July 1990, 128.7; for August 1990, 129.9; and for September 1990, 131.1. The arithmetic mean for this calendar quarter is 129.9. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1990, exceeds that for the calendar quarter ending September 30, 1989, by 5.4 percent, a cost-of-living benefit increase of 5.4 percent is effective for benefits under title II of the Act beginning December 1990.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1991, benefits will increasely 5.4 percent beginning with benefits for December 1990 which are payable on January 3, 1991. In the case of first eligibility after 1990, the 5.4 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95-216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasing by 5.4 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1990); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1991, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 5.4 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for Dec. 1989	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for Dec. 1990	Special minimum family benefit payable for Dec. 1990
$21.90	11	$23.00	$34.70
43.60	12	45.90	69.20
65.60	13	69.10	104.00
87.40	14	92.10	138.30
109.30	15	115.20	172.80
131.20	16	138.20	207.80
153.10	17	161.30	242.30
175.00	18	184.40	276.80
196.90	19	207.50	311.40
218.60	20	230.40	345.90
240.80	21	253.80	380.80
262.50	22	276.60	415.20
284.60	23	299.90	450.30
306.40	24	322.90	484.80
328.20	25	345.90	519.00
350.30	26	369.20	554.20
372.20	27	392.20	588.70
393.20	28	415.10	623.10
415.70	29	438.10	657.90
437.60	30	461.20	692.20

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surviving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $159.00 for an individual under sections 227 and 228 of the Act is increased by 5.4 percent to obtain the new amount of $167.50. The present monthly benefit amount of $79.60 for a spouse under section 227 is increased by 5.4 percent to $83.80.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 5.4 percent effective January 1991. Therefore, the yearly Federal SSI benefit amounts of $4,632 for an eligible individual, $6,948 for an eligible individual with an eligible spouse, and $2,316 for an essential person, which became effective January 1990, are increased, effective January 1991, to $4,884, $7,320, and $2,448, respectively, after rounding. The corresponding monthly amounts for 1991 are determined by dividing the yearly amounts by 12, giving $407, $610, and $204, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Averages of the Total Wages for 1989

General. Under various provisions of the Act, several amounts are scheduled to increase automatically for 1991. These include (i) the contribution and benefit base, (ii) the "old law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), (iii) the amount of earnings required for a worker to be credited with a quarter of coverage, (iv) the retirement test exempt amounts, and (v) the "bend points" in the PIA and maximum family benefit formulas. Normally, all of these amounts are based on the increase in the average of the total wages.

However, section 10208 of Pub. L. 101-239 (the Omnibus Budget Reconciliation Act of 1989) requires that the contribution and benefit base and the "old law" contribution and benefit base be determined under a "transitional rule" using deemed average wage amounts. The deemed average wages and the resulting bases are determined later in this notice.

The determination of the average wage figure for 1989 is based on the 1988 average wage figure of $19,334.04 announced in the **Federal Register** on October 31, 1989 (54 FR 45801), along with the percentage increase in average wages from 1988 to 1989 measured by annual wage data tabulated by the Social Security Administration (SSA).

The average amounts of wages calculated directly from this data were $18,274.38 and $18,997.93 for 1988 and 1989, respectively. To determine an average wage figure for 1989 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1988 average wage figure of $19,334.04 by the percentage increase in average wages from 1988 to 1989 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1989 = $19,334.04 × $18,997.93 ÷ $18,274.38 = $20,099.55. Therefore, the average wage for 1989 is determined to be $20,099.55.

Quarter of Coverage Amount

General. The 1991 amount of earnings required for a quarter of coverage is $540. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year).

Computation. Under the prescribed formula, the quarter of coverage amount for 1991 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar 1989 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1989 has been determined to be $20,099.55 as stated above.

Quarter of Coverage Amount. The ratio of the average wage for 1989, $20,099.55, compared to that for 1976, $9,226.48, is 2.1784635. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.1784635 produces the amount of $544.62, which must then be rounded to $540. Accordingly, the quarter of coverage amount is determined to be $540 for 1991.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated in the Act at section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1990 was determined by this formula to be $780. Under the formula, the exempt amount for 1991 shall be the 1990 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1989 to (2) the average amount of those wages for calendar year 1988. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for 1989, as determined above, is $20,099.55. Therefore, the ratio of the average wages for 1989, $20,099.55, compared to that for 1988, $19,334.04, is 1.0395939.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1990 retirement earnings test monthly exempt amount of $780 by the ratio of 1.0395939 produces the amount of $810.88. This must then be rounded to $810. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $810 for 1991. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $9,720.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $570 for 1990. The formula provides that the exempt amount for 1991 shall be the 1990 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1989 to (2) the average amount of those wages for calendar year 1988. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for 1989, as determined above, is $20,099.55. Therefore, the ratio of the average wages for 1989, $20,099.55, compared to that of 1988, $19,334.04, is 1.0395939.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1990 retirement earnings test monthly exempt amount of $570 by the ratio 1.0395939 produces the amount of $592.57. This must then be rounded to $590. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $590 for 1991. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $7,080.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1991, we divide the average of the total wages for 1989, $20,099.55, by the average of the total wages for each year prior to 1989 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1991.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1991 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1989, $20,099.55, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1991, the ratio is 2.0552864. Multiplying the 1979 amounts of $180 and $1,085 by 2.0552864 produces the amounts of $369.95 and $2,229.99. These must then be rounded to $370 and $2,230. Accordingly, the portions of the average indexed monthly earnings to be used in 1991 are determined to be the first $370, the amount between $370 and $2,230, and the amount over $2,230.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1991, or who die in 1991 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $370 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $370 and through $2,230, plus

(c) 15 percent of the average indexed monthly earnings over $2,230.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **FEDERAL REGISTER** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. Thus, the bend points for 1979 were $230, $332, and $433.

The bend points for 1991 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1989, $20,099.55, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1991, the ratio is 2.0552864. Multiplying the amounts of $230, $332, and $433 by 2.0552864 produces the amounts of $472.72, $682.36, and $889.94. These amounts are then rounded to $473, $682, and $890. Accordingly, the portions of the primary insurance amounts to be used in 1991 are determined to be the first $473, the amount between $473 and $682, the amount between $682 and $890, and the amount over $890.

Consequently, for the family of a worker who becomes age 62 or dies in 1991, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $473 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $473 through $682, plus

(c) 134 percent of the worker's primary insurance amount over $682 through $890, plus

(d) 175 percent of the worker's primary insurance amount over $890.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Deemed Average of the Total Wages Under Transitional Rule

Section 10208 of Public Law 101-239, which amended section 209 of the Act (42 U.S.C. 409), provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule was used to determine the bases for 1990 and will be used to determine the bases for 1991 and 1992. The determination of the 1990 bases was published as a notice in the **Federal Register** on December 29, 1989, at 54 FR 53751, and superseded the determination (without use of the transitional rule) published as a notice in the **Federal Register** on October 31, 1989, at 54 FR 45801.

Computation. Under the transitional rule, the deemed average of the total wages for 1989 is equal to the average of the total wages for 1989, as determined above, plus 2 percent of the average wage amount determined for 1988.

Amount. The average wage amount announced above for 1989 was $20,099.55. The average wage amount announced for 1988 in the **Federal Register** on October 31, 1989 (54 FR 45801), was $19,334.04. Two percent of $19,334.04 is $386.68, and the sum of this amount and $20,099.55 is $20,486.23. Therefore, the deemed average wage under the transitional rule for 1989, as used below to determine the bases for 1991, is $20,486.23.

Contribution and Benefit Base

General. The contribution and benefit base is $53.400 for remuneration paid in 1991 and self-employment income earned in taxable years beginning in 1991.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a person's Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. This formula was amended by section 10208 of Public Law 101-239 to substitute deemed average wage amounts for average wage amounts. Under the prescribed formula, the contribution and benefit base for 1991 shall be equal to the 1990 base of $51,300 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1989 to (2) the deemed average amount of those wages for the calendar year 1988. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages. The deemed average wage for calendar year 1988 was previously determined to be $19,702.57. That determination was published as a notice in the **Federal Register** on December 29, 1989, at 54 FR 53751. The deemed average wage for calendar year 1989 has been determined to be $20,486.23, as stated above.

Amount. The ratio of the deemed average wage for 1989, $20,486.23, compared to the deemed average wage for 1988, $19,702.57, is 1.0397745. Multiplying the 1990 contribution and benefit base amount of $51,300 by the ratio of 1.0397745 produces the amount of $53,340.43 which must then be rounded to $53,400. Accordingly, the contribution and benefit base is determined to be $53,400 for 1991.

"Old-Law" Contribution and Benefit Base

General. The 1991 "old-law" contribution and benefit base is $39,600. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but as amended by section 10208 of Public Law 101-239. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1990 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1989 to (2) the deemed average amount of those wages for the calendar year of 1988. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages. The deemed average wage for calendar year 1988 was previously determined to be $19,702.57. The deemed average wage for calendar year 1989 has been determined to be $20,486.23, as stated above.

Amount. The ratio of the deemed average wage for 1989, $20,486.23, compared to the deemed average wage for 1988, $19,702.57, is 1.0397745. Multiplying the 1990 "old-law" contribution and benefit base amount of $38,100 by the ratio of 1.0397745 produces the amount of $39,615.41 which must then be rounded to $39,600. Accordingly, the "old-law" contribution and benefit base is determined to be $39,600 for 1991.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802-93.805, and 93.807 Social Security Programs)

Dated: October 25, 1990.

Louis W. Sullivan,
Secretary of Health and Human Services.

APPENDIX D

FORMULA FOR COMPUTING BENEFITS[1]

The Social Security Amendments of 1977 provided a new method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings

To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1989, we divide the average of the total wages for 1987, $18,426.51, by the average of the total wages for each year prior to 1987 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1989.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amounts for 1989 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1987, $18,426.51, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1989, the ratio is 1.88421. Multiplying the 1979 amounts of $180 and $1,085 by 1.88421 produces the amounts of $339.16 and $2,044.37. These must then be rounded to $339 and $2,044. Accordingly, the portions of the average indexed monthly earnings to be used in 1989 are determined to be the first $339, the amount between $339 and $2,044, and the amount over $2,044.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1989, or who die in 1989 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $339 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $339 and through $2,044, plus

(c) 15 percent of the average indexed monthly earnings over $2,044.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).[2]

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[1] In compliance with Social Security Act §215(a)(1)(D), this formula was published in the **Federal Register** (49 FR 43778) on October 31, 1984.

For 1988 computations, see **Federal Register** (52 FR 41672) dated October 29, 1987. (Vol. II, p. 929)

For 1989 computations, see **Federal Register** (53 FR 43932) dated October 31, 1988. (Vol. II, p. 937)

[2] P.L. 97-35, §2206, changed the provision regarding rounding, effective with respect to initial calculations and adjustments which are attributable to periods after August 1981.

APPENDIX E

"AVERAGE OF THE TOTAL WAGES" FOR INDEXING PURPOSES[1]

Calendar Year	Average Wages	Calendar Year	Average Wages
1951	$2,799.16	1969	5,893.76
1952	2,973.32	1970	6,186.24
1953	3,139.44	1971	6,497.08
1954	3,155.64	1972	7,133.80
1955	3,301.44	1973	7,580.16
1956	3,532.36	1974	8,030.76
1957	3,641.72	1975	8,630.92
1958	3,673.80	1976	9,226.48
1959	3,855.80	1977	9,779.44
1960	4,007.12	1978	10,556.03
1961	4,086.76	1979	11,479.46
1962	4,291.40	1980	12,513.46
1963	4,396.64	1981	13,773.10
1964	4,576.32	1982	14,531.34
1965	4,658.72	1983	15,239.24
1966	4,938.36	1984	16,135.07
1967	5,213.44	1985	16,822.51
1968	5,571.76	1986	17,321.82
		1987	18,426.51

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[1] See Social Security Act §§203(f)(8)(B)(ii)(I); 215(a)(1)(B)(ii), (a)(1)(D); and 230(b)(2). Figures for 1951 through 1977 were published at 43 FR 61016 on December 29, 1978.

Figures for:	Published at:	Date:
1978	44 FR 62956	November 1, 1979
1979	45 FR 76252	November 18, 1980
1980	46 FR 53791	October 30, 1981
1981	47 FR 51003	November 10, 1982
1982	48 FR 50414	November 1, 1983
1983	49 FR 43776	October 31, 1984
1984	50 FR 45558	October 31, 1985
1985	51 FR 40256	November 5, 1986
1986	52 FR 41672	October 29, 1987
1987	53 FR 43934	October 31, 1988

APPENDIX F

[“Old Law” Contribution and Benefit Base
Special Minimum Benefits—“Year of Coverage”]

Year	Amount	Authority	
1977	$16,500	SSAct §230	
1978	17,700	SSAct §230	
1979	18,900	44 FR 28881	May 17, 1979
1980	20,400	45 FR 21715	April 2, 1980
1981	22,200	46 FR 39477	August 3, 1981
1982	24,300	47 FR 6098	February 10, 1982
1983	26,700	48 FR 7814	February 24, 1983
1984	28,200	49 FR 9959	March 16, 1984
1985	29,700	50 FR 11562	March 22, 1985
1986	31,500	50 FR 45558	October 31, 1985
1987	32,700	51 FR 40256	November 5, 1986
1988	33,600	52 FR 41672	October 29, 1987
1989	35,700	53 FR 43932	October 31, 1988
1990	37,500	54 FR 45805	October 31, 1989
1991	39,600	55 FR 45856	October 31, 1990

APPENDIX G

CURRENT AND PAST MEDICARE COST-SHARING AND PREMIUM AMOUNTS

A. HI Cost-Sharing Amounts[1]

		Daily Coinsurance		
		Hospital		
Calendar Year	Initial Deductible	61-90 Days	Lifetime Reserve	Skilled Nursing Facility, 21-100
1966-68*	$40	$10	$20	$ 5.00
1969	44	11	22	5.50[2]
1970	52	13	26	6.50[3]
1971	60	15	30	7.50[4]
1972	68	17	34	8.50[5]
1973	72	18	36	9.00[6]
1974	84	21	42	10.50[7]
1975	92	23	46	11.50[8]
1976	104	26	52	13.00[9]
1977	124	31	62	15.50[10]
1978	144	36	72	18.00[11]
1979	160	40	80	20.00[12]
1980	180	45	90	22.50[13]
1981	204	51	102	25.50[14]
1982	260	65	130	32.50[15]
1983	304	76	152	38.00[16]
1984	356	89	178	44.50[17]
1985	400	100	200	50.00[18]
1986	492	123	246	61.50[19]
1987	520	130	260	65.00[20]
1988	540	135	270	67.50[21]
1989	560[22]			
1990	592[23]	148[24]	296[24]	74.00[24]
1991	628[25]	157[25]	314[25]	78.50[25]

*Hospital benefits first available in July 1966, except lifetime reserve benefits first available in January 1968. Skilled nursing facility benefits first available in January 1967.

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[1] See §1813.
[2] 33 FR 14380; September 24, 1968.
[3] 34 FR 15264; September 30, 1969.
[4] 35 FR 15254; September 30, 1970.
[5] 36 FR 19271; October 1, 1971.
[6] 37 FR 21452; October 11, 1972.
[7] 38 FR 28102; October 11, 1973.
[8] 39 FR 35699; October 3, 1974.
[9] 40 FR 45216; October 1, 1975.
[10] 41 FR 43220; September 30, 1976.
[11] 42 FR 51669; September 29, 1977.
[12] 43 FR 44891; September 29, 1978.
[13] 44 FR 55660; September 27, 1979.
[14] 45 FR 65042; October 1, 1980.
[15] 46 FR 47115; September 24, 1981.
[16] 47 FR 43631; October 1, 1982.
[17] 48 FR 44912; September 30, 1983.
[18] 49 FR 38513; September 28, 1984.
[19] 50 FR 39940; September 30, 1985.
[20] 51 FR 32691; September 15, 1986.
Revised by 51 FR 42007; November 20, 1986.
[21] 52 FR 35056; September 16, 1987.
[22] 53 FR 38357; September 30 1988.
See also 53 FR 44144; November 1, 1988.
[23] 54 FR 40205; September 29, 1989.
See also 55 FR 24159; June 14, 1990.
[24] 55 FR 24159; June 14, 1990.
[25] 55 FR 46104; November 1, 1990

B. HI and SMI Premium Rates

Period	Standard Monthly Premium Rate		Catastrophic Cov. Prem.	SMI Adequate Actuarial Rates[1]	
	HI[2]	SMI[1]		Aged	Disabled
7/66-3/68	....	$ 3.00		....	....
4/68-6/70	....	4.00[3]		....	....
7/70-6/71	....	5.30[4]		....	....
7/71-6/72	....	5.60[5]		....	....
7/72-6/73	....	5.80[6]		....	....
7/73-6/74	$ 33.00[2]	6.30[7]		$6.30	$14.50[8]
7/74-6/75	36.00[9]	6.70		6.70	18.00[10]
7/75-6/76	40.00[11]	6.70		7.50	18.50[12]
7/76-6/77	45.00[13]	7.20		10.70	19.00[14]
7/77-6/78	54.00[15]	7.70		12.30	25.00[16]
7/78-6/79	63.00	8.20		13.40	25.00[17]
7/79-6/80	69.00	8.70		13.40	25.00[18]
7/80-6/81	78.00[19]	9.60		16.30	25.50[20]
7/81-6/82	89.00[21]	11.00		22.60	36.60[22]
7/82-6/83	113.00	12.20		24.60	42.10[23]
7/83-12/83	113.00	12.20[24]		27.00	46.10[25]
1/84-12/84	155.00[26]	14.60		29.20	54.30[27]
1/85-12/85	174.00	15.50		31.00	52.70[28]
1/86-12/86	214.00	15.50		31.00	40.80[29]
1/87-12/87	226.00[30]	17.90[31]		35.80[31]	53.00[31]
1/88-12/88	234.00[32]	24.80[33]		49.60[33]	48.60[33]
1/89-12/89	156.00[34]	27.90[35]	4.00*[35]	55.80[35]	34.30[35]
1/90-12/90	175.00[36]	28.60[37]		57.20[37]	44.10[37]
1/91-12/91		29.90[38]		62.60[38]	56.00[38]

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[1] See 1839(c).
[2] See 1818.
[3] 32 FR 21044; December 30, 1967.
33 FR 1215; January 30, 1968.
34 FR 223; January 7, 1969.
[4] 34 FR 20442; December 31, 1969.
[5] 35 FR 20018; December 31, 1970.
[6] 37 FR 103; January 5, 1972.
[7] 38 FR 93; January 3, 1973.
[8] 38 FR 94; January 3, 1973.
[9] 39 FR 1523; January 10, 1974.
[10] 39 FR 1658; January 11, 1974.
[11] 39 FR 45309; December 31, 1974.
[12] 40 FR 1289; January 7, 1975.
[13] 40 FR 59472; December 24, 1975.
[14] 41 FR 1310; January 7, 1976.
[15] 41 FR 54823; December 15, 1976.
[16] 41 FR 55751; December 22, 1976.
[17] 42 FR 65275; December 30, 1977.
[18] 43 FR 61010; December 29, 1978.
[19] 44 FR 73164; December 17, 1979.
[20] 44 FR 77264; December 31, 1979.
[21] 45 FR 85160; December 24, 1980.
[22] 45 FR 85161; December 24, 1980.
[23] 46 FR 63389; December 31, 1981.
[24] 48 FR 26891; June 10, 1983.
[25] 47 FR 58366; December 30, 1982.
[26] 48 FR 44913; September 30, 1983.
[27] 48 FR 44914; September 30, 1983.
[28] 49 FR 38510; September 28, 1984.
[29] 50 FR 39932; September 30, 1985.
[30] 51 FR 35053; October 1, 1986. Revised by 51 FR 42007; November 20, 1986.
[31] 51 FR 35291; October 2, 1986. Confirmed by 51 FR 42007; November 20, 1986.
[32] 52 FR 35056; September 16, 1987.
[33] 52 FR 36716; September 30, 1987.
[34] 53 FR 45161; November 8, 1988.
[35] 53 FR 38348; September 30, 1988.
[36] 54 FR 48322; November 22, 1989.
[37] 54 FR 43862; October 27, 1989. Revised by 55 FR 13324; April 10, 1990.
[38] 56 FR 8208; February 27, 1991.
*Puerto Rico residents $1.30. Residents of other U.S. territories and commonwealths $2.10.

NOTE: For July and August 1973, the promulgated SMI standard premium rate shown above was reduced by the Cost of Living Council to $5.80 and $6.10, respectively.

APPENDIX H

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration[1]

Termination of Capital Expenditure Review Agreements Under Section 1122 of the Social Security Act

The Department of Health and Human Services announces that, as of October 1, 1987, it has terminated agreements between the Secretary and participating States to carry out provisions of Section 1122 of the Social Security Act (the Act) and will no longer withhold Medicare and Medicaid funds based on past determinations under such agreements. With repeal of Title XV of the Public Health Services (PHS) Act, effective on January 1, 1987, the Department no longer appropriated funds available to support State capital expenditure review activities or for administration of the program.

The section 1122 program was an early cost containment measure established under section 221 of the Social Security Amendments of 1972 (Pub. L. 92-603). The intent of legislation was to deter unwarranted capital expenditures by health care facilities and to support health planning activities in various States by requiring review and approval of proposed capital expenditures based upon plans, standards, and criteria developed by State and local health planning agencies. (See S. Rep. No. 1230, 92d Cong., 2d Sess. 185 (1972).) Section 1122 of the Act created a voluntary capital expenditure review program in which States were able to participate by entering into an agreement with the Secretary under section 1122(b). Agreements with sixteen States and one territory were terminated as of October 1, 1987. Under the section 1122 agreements, the Health[2] Financing Administration (HCFA) has withheld the capital portion of Medicare and Medicaid reimbursements for services furnished by a facility that proceeded with a disapproval capital project. The regulations pertinent to the section 1122 program are codified at 42 CFR Part 100 and 42 CFR 405.1890, 413.161, and 447.35.

The statutory background for the Federal funding of section 1122 reviews is as follows. When section 1122 of the Act was first enacted by section 221 of Pub. L. 92-603, section 1122(c) provided that the costs of State reviews under section 1122 would be paid by the Secretary from the Medicare Hospital Insurance Trust Fund. In fact, payments were made from the Trust Fund for the initial years of implementation: Fiscal years (FYs) 1974, 1975, and part of 1976. When Title XV of the PHS Act was enacted in 1975, establishing a comprehensive National Health Planning Program, Congress provided that, for States that chose to participate in the section 1122 program, the conduct of section 1122 reviews was to be one of the required functions of the State Health Planning and Development Agencies under their Title XV designation agreements. Accordingly, the State agency grants under section 1525 of the PHS Act would be available to pay the costs of the section 1122 reviews. Based on that Congressional action, the Department ceased making payments for section 1122 reviews from the Medicare Trust Fund.

Under section 607(a) of the Social Security Amendments of 1983 (Pub. L. 98-21), Congress amended section 1122(c) to authorize payments to States for the costs of their reviews from the general fund of the Treasury, rather than from the Medicare Hospital Insurance Trust Fund. Nothing in the legislative history of that amendment suggests that Congress took issue with the Department's position that the costs of section 1122 reviews were payable from a State's section 1525 grant.

On November 14, 1986, the President signed Pub. L. 99-660. Section 701(a) of Pub. L. 99-660 repealed the comprehensive health planning authority, Title XV of the PHS Act, effective January 1, 1987. However, under Chapter VIII of Title I of the Urgent Supplemental Appropriations Act for Fiscal Year 1986 (Pub. L. 99-349), enacted on July 2, 1986, States were permitted to use unobligated funds available for carryover to continue Title XV functions, including section 1122 reviews, through September 30, 1987. The elimination of Title XV health planning authority and the lack of any other funds appropriated to support these reviews effectively leave the section 1122 program without a mechanism of funding. While section 1122(c) may be viewed as an authorization of appropriations for section 1122 activities, apart from Title XV, Congress has not chosen to appropriate funds under that authority. Therefore the Department terminated section 1122 agreements with States effective October 1, 1987.

For several reasons, the repeal of Title XV also makes administration of section 1122 impossible even if a State were to fund its own activities. First is the lack of any continuing entity that could serve as the designated planning agency. Section 1122(b) of the Act, which makes reference to section 1122(d)(1)(B)(ii), provides that the designated planning agency must be either a State agency established pursuant to section 314(a) or section 604(a) of the PHS Act, or a local agency established under section 314(b) of the PHS Act. The 314(a) and 314(b) agencies were the predecessors to the State Health Planning and Development Agency and the Health Systems Agency provided for under Title XV. The 604(a) agency was the agency charged with administration of the former Hill-Burton program. Since the agencies funded under Title XV no longer are designated or funded under that title, if is apparent that there is not[3] longer an entity eligible to be designated for purposes of section 1122 of the Act. Chapter VIII of Title I of Pub. L. 99-349 provided an interim measure to permit the former State Health Planning and Development Agencies to carry out these activities during FY 1987, but this amendment has no further effect.

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[1] This material was published in the Federal Register on March 31, 1988, at 53 FR 10431.
[2] Probably should read "Health Care".

In addition, it is important to note that, under section 1122, designated planning agencies were required to review proposed capital expenditures to determine their conformity with applicable "standards, criteria, or plans developed pursuant to the Public Health Service Act (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1966) to meet the need for adequate health care facilities * * *" (Section 1122(b).) The agencies are not authorized to apply any other criteria in their reviews. As a practical matter, this requirement called for the designated planning agency to review proposed expenditures for conformity with the State health plan and the health systems plan developed under Title XV, given that the plans developed long ago under sections 314(a), 314(b), and 604 of the PHS Act and under the Community Mental Health Centers Act have been out of date for many years. Because no plans, criteria, or standards are currently being developed under any of these statutory authorities, there is nothing against which a proposed capital expenditure may properly be judged for conformity.

Finally, in the absence of funding under Title XV of the PHS Act, the only source of funds for payment to States for their costs in carrying out section 1122 of the Act would be a general fund appropriate under the authorization of section 1122(c). Yet no such appropriation exists. Thus, a critical element of the statutory scheme ("The Secretary shall pay * * *" States for their costs of conducting reviews) is lacking. Accordingly, the agreements envisioned by the statute cannot be complied with by the Secretary. Thus, even if a State were willing to continue its participation under section 1122 using solely State funds for its administrative costs, the Department believes that section 1122 no longer contains an adequate basis for the agreements.

For similar reasons, the Department concludes that it would be inappropriate to continue withholding Medicare and Medicaid payments as sanctions for past disapprovals under section 1122 agreements. These reasons are (1) the lack of previously available remedies to modify or challenge a prior disapproval, and (2) the lack of current plans against which to judge a disapproved project that could claim a right to a new review.

The first consideration stems from the regulations that implement section 1122. These regulations provide certain procedural rights to disapproved applicants that would be eliminated by a decision to continue withholding. Under 42 CFR 100.109(c)(1)(iii), a facility that has been subjected to withholding may seek reconsideration of that finding at any time following the later of three years from the date of the finding or three years from the date of the last reconsideration by the designated planning agency. Similarly, under subparagraphs (i) and (ii) of that paragraph, if there has been a substantial change in facilities or services in the area or a substantial change in the need for facilities or services in the area, a reconsideration would be available to the applicant. Given the termination of the agreements with all remaining States and the fact that there are no longer any Title XV State agencies, this process will no longer be available to applicants previously disapproved. Since there is no longer any legally appropriate mechanism to review previously disapproved projects, the Department concludes that all prior sanctions should be terminated effective October 1, 1987.

Moreover, as noted above, there are no longer any current plans against which a proposed expenditure may be judged. Thus, even if a means could be found to afford an applicant a new review, there would be no substantive criteria with which to conduct the review.

Accordingly, beginning October 1, 1987, capital costs associated with previously disapproved projects will not be subject to further Medicare and Medicaid withholding. Any capital costs that are related to a period prior to October 1, 1987 and are associated with a disapproved expenditure may not be allowed.

A State may choose to continue a capital expenditure review program so long as it does not involved Federal participation or Federal funding.

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[3] Probably should be "it is apparent that there is no".

Dated: January 22, 1988.

Robert E. Windom,
Assistant Secretary for Health.
March 8, 1988.

William L. Roper,
Administrator, Health Care Financing Administration.

Otis R. Bowen,
Secretary.

APPENDIX I

LAWS AMENDING THE SOCIAL SECURITY ACT

Public Law	*Approved*	*Short Title of Public Law*
75-722	06-25-38	Railroad Unemployment Insurance Act
76-1	02-10-39	[Internal Revenue Code of 1939][1]
76-36	04-19-39	[State Unemployment Compensation Appropriations]
76-141	06-20-39	[Railroad Unemployment Insurance Act, Amendments]
76-379	08-10-39	Social Security Act Amendments of 1939
78-17	03-24-43	[War Shipping Administration]
78-235	02-25-44[2]	Revenue Act of 1943
78-285	04-04-44	[War Shipping Administration, Amendments]
78-410	07-01-44	Public Health Service Act
78-458	10-03-44	War Mobilization and Reconversion Act of 1944
79-201	10-23-45	[Bonneville Project Act, Amendments]
79-291	12-29-45	[International Organizations Immunities Act]
79-719	08-10-46	Social Security Act Amendments of 1946
80-379	08-06-47	Social Security Act Amendments of 1947
80-492	04-20-48[2]	[Social Security Act Amendments—April 1948]
80-642	06-14-48[2]	[Employment Taxes—Social Security Benefits]
81-174	07-16-49	[Social Security Act—§1302 Extension]
81-439	10-31-49	Agricultural Act of 1949
81-734	08-28-50	Social Security Act Amendments of 1950
81-814	09-23-50	Revenue Act of 1950
82-78	07-12-51	[Agricultural Act of 1949, Amendments]
82-420	06-28-52	[Social Security Act §218(f) Amendments]
82-590	07-18-52	Social Security Act Amendments of 1952
83-269	08-14-53	[Military Service Wage Credits]
83-279	08-15-53	[Wisconsin Retirement Fund]
83-567	08-05-54	Employment Security Administrative Financing Act of 1954
83-761	09-01-54	Social Security Amendments of 1954
83-767	09-01-54	[Unemployment Compensation]
84-325	08-09-55	[Military Wage Credits—pre April 1956]
84-880	08-01-56	Social Security Amendments of 1956
84-881	08-01-56	Servicemen's and Veterans' Survivor Benefits Act
85-109	07-17-57	[Social Security Act—Title II Amendments—1957]
85-226	08-30-57	[Retirement Systems in Certain States]
85-227	08-30-57	[Retirement Systems—State and Local Employees]
85-229	08-30-57	[Social Security Coverage—State and Local Employees]
85-238	08-30-57	[Social Security Act—Title II Amendments—1957]
85-239	08-30-57	[Internal Revenue—SEI—Ministers]
85-786	08-27-58	[Social Security—Wages]
85-787	08-27-58	[Social Security Coverage—Two-part Retirement Systems]
85-798	08-28-58	[Social Security—Title II Amendments—1958]
85-840	08-28-58	Social Security Amendments of 1958
85-848	08-28-58	Ex-Serviceman's Unemployment Compensation Act of 1958
85-857	09-02-58	[Title 38, United States Code, Codification]
85-927	09-06-58	[Social Security Act Amendments—September 1958]
86-70	06-25-59	Alaska Omnibus Act
86-168	08-18-59	Farm Credit Act of 1959
86-284	09-16-59	[Social Security Act—§218(p) Amendment]
86-346	09-22-59	[U.S. Savings Bonds Interest Rates]
86-415	04-08-60	Public Health Service Commissioned Corps Personnel Act of 1960
86-442	04-22-60	[Federal Employees—Unemployment Compensation—Eligibility]

Public Law	*Approved*	*Short Title of Public Law*
86-507	06-11-60	[Authorization for Use of Certified Mail]
86-624	07-12-60	Hawaii Omnibus Act
86-778	09-13-60	Social Security Amendments of 1960
87-6	03-24-61	Temporary Extended Unemployment Compensation Act of 1961
87-31	05-08-61	[Social Security Act Amendments—May 1961]
87-64	06-30-61	Social Security Amendments of 1961
87-256	09-21-61	Mutual Educational and Cultural Exchange Act of 1961
87-293	09-22-61	Peace Corps Act
87-543	07-25-62	Public Welfare Amendments of 1962
87-878	10-24-62	[Social Security Amendments of 1962]
88-31	05-29-63	[Social Security Act—Title IX Amendments]
88-156	10-24-63	Maternal and Child Health and Mental Retardation Planning Amendments of 1963
88-272	02-26-64	Revenue Act of 1964
88-347	06-30-64	[Social Security Act—Title XI Amendment]
88-350	07-02-64	[Retirement Systems—1964 Amendment]
88-382	07-23-64	[Nevada Retirement System]
88-641	10-13-64	[Social Security Act—Title IV Amendments]
88-650	10-13-64	[Social Security Act Amendments—1964]
89-97	07-30-65	Social Security Amendments of 1965
89-368	03-15-66	Tax Adjustment Act of 1966
89-384	04-08-66	[Initial Enrollment Period—Supplementary Medical Insurance Benefits]
89-554	09-06-66	[Enactment of Title 5, United States Code]
89-713	11-02-66	[Social Security Act—§1861(v) Amendment]
90-36	06-29-67	[Requests Under Tariff Schedules—Technical Amendments of 1965]
90-248	01-02-68	Social Security Amendments of 1967
90-364	06-28-68	Revenue and Expenditure Control Act of 1968
90-430	07-26-68	[Employment Security Administration Account—Transfers]
90-486	08-13-68	National Guard Technicians Act of 1968
91-41	07-09-69	[Tariff Schedules—Social Security Act Amendments]
91-53	08-07-69	[Unemployment Security Amendments—1969]
91-56	08-09-69	[Tariff Schedules—Social Security Act—Title XIX Amendments]
91-172	12-30-69	Tax Reform Act of 1969
91-373	08-10-70	Employment Security Amendments of 1970
91-452	10-15-70	Organized Crime Control Act of 1970
91-690	01-12-71	[Social Security Act—§1861(e) Amendment]
92-5	03-17-71	[Public Debt Limit—Social Security Wage Base]
92-40	07-01-71	[Social Security Act—§1113(d) Amendment]
92-223	12-28-71	[Social Security—Lump Sum Death Payment]
92-224	12-29-71	[Social Security Act—§903 Amendments]
92-329	06-30-72	[Emergency Unemployment Compensation Program Extension]
92-336	07-01-72	[Public Debt Limit—Extension]
92-345	07-10-72	[Social Security Act Title V Amendments]
92-512	10-20-72	[Limitation on Grants]
92-603	10-30-72	Social Security Amendments of 1972
93-53	07-01-73	[Public Debt Limit—Temporary Increase]
93-58	07-06-73	[Social Security Act—§226(e) Amendments]
93-66	07-09-73	[Cost-of-Living Increase in Social Security Benefits]
93-107	12-31-74[2]	[Montana Retirement System]
93-233	12-31-73	[Social Security Benefits—Increase]
93-368	08-07-74	[Vessels—Equipment and Repairs—Emergency Unemployment Compensation]
93-406	09-02-74	Employee Retirement Income Security Act of 1974
93-445	10-16-74[2]	[Railroad Retirement System Amendments]
93-480	10-26-74	[Tariffs Schedules—Social Security Act §1862 Amendments]
93-484	10-26-74	[Tariffs—Medicare Appeals]
93-608	01-02-75	[Reports to Congress]

Public Law	*Approved*	*Short Title of Public Law*
93-647	01-04-75	Social Service Amendments of 1974
94-44	06-28-75	[Social Security—Temporary Assistance]
94-48	07-01-75	[Social Security Medicaid]
94-88	08-09-75	[Tariffs—Social Security]
94-120	10-21-75	[Social Security—Title XX Amendments]
94-182	12-31-75	[Social Security—Medicare]
94-202	01-02-76	[Social Security—Hearings and Review Procedures]
94-273	04-21-76	Fiscal Year Adjustment Act
94-331	06-30-76	[Supplemental Security Income]
94-365	07-14-76	[Social Security—Report to Congress]
94-368	07-16-76	[Social Security—Medicare Extension]
94-401	09-07-76	[Social Security—Child Day Care]
94-437	09-30-76	Indian Health Care Improvement Act
94-455	10-04-76	Tax Reform Act of 1976
94-460	10-08-76	Health Maintenance Organization Amendments of 1976
94-552	10-18-76	[Social Security—Medical Assistance]
94-563	10-19-76	[Social Security—Taxes]
94-566	10-20-76	Unemployment Compensation Amendments of 1976
94-569	10-20-76	[Social Security—Presumptively Blind Individuals]
94-585	10-21-76	[Social Security—Food Stamps]
95-30	05-23-77	Tax Reduction and Simplification Act of 1977
95-59	06-30-77	[Smith College—Social Security Act Amendments]
95-83	08-01-77	[Public Health Service Act—Medicaid]
95-142	10-25-77	Medicare-Medicaid Anti-Fraud and Abuse Amendments
95-171	11-12-77	[Social Security Act—Titles IV and XVI Amendments]
95-210	12-13-77	[Social Security—Rural Health Clinic Services]
95-216	12-20-77	Social Security Amendments of 1977
95-292	06-13-78	[Social Security—End Stage Renal Disease Program]
95-472	10-17-78	[Treatment of Group Legal Service Plan Contributions]
95-559	11-01-78	Health Maintenance Organization Amendments of 1978
95-598	11-06-78	[Title 11, U.S.C.—Bankruptcy—Child Support]
95-600	11-06-78	Revenue Act of 1978
95-626	11-10-78	Health Services and Centers Amendments of 1978
96-32	07-10-79	[Public Health Service Act and Other Laws—Technical Amendments]
96-79	10-04-79	Health Planning and Resources Development Amendments of 1979
96-178	01-02-80	[Social Security Act Titles IV and XX Amendments]
96-222	04-01-80	Technical Corrections Act of 1979
96-249	05-26-80	Food Stamp Act Amendments of 1980
96-265	06-09-80	Social Security Disability Amendments of 1980
96-272	06-17-80	Adoption Assistance and Child Welfare Act of 1980
96-398	10-07-80	Mental Health Systems Act
96-403	10-09-80	[Social Security Tax Receipts—Allocation]
96-473	10-19-80	[Social Security Act Retirement Test Amendments]
96-499	12-05-80	Omnibus Reconciliation Act of 1980
96-611	12-28-80	[Social Security Act Titles IV, XVI and XVIII Amendment]
97-34	08-13-81	Economic Recovery Tax Act of 1981
97-35	08-13-81	Omnibus Budget Reconciliation Act of 1981
97-123	12-29-81	[Amendments to P.L. 97-35]
97-248	09-03-82	Tax Equity and Fiscal Responsibility Act of 1982
97-300	10-13-82	Job Training Partnership Act
97-375	12-21-82	Congressional Reports Elimination Act of 1982

Public Law	*Approved*	*Short Title of Public Law*
97-377	12-21-82	[Further Continuing Appropriations for Fiscal Year 1983]
97-424	01-06-83	Surface Transportation Assistance Act of 1982
97-448	01-12-83	Technical Corrections Act of 1982
97-455	01-12-83	[Temporary Payment of Disability Benefits]
98-21	04-20-83	Social Security Amendments of 1983
98-76	08-12-83	Railroad Retirement Solvency Act of 1983
98-90	08-29-83	[Social Security Act—Title XVIII Amendments—1983]
98-118	10-11-83	[Extension of "Federal Supplemental Compensation Act of 1982," P.L. 97-248, Title VI, Subtitle A]
98-135	10-24-83	Federal Supplemental Compensation Amendments of 1983
98-369	07-18-84	Deficit Reduction Act of 1984
98-378	08-16-84	Child Support Enforcement Amendments of 1984
98-396	08-22-84	Second Supplemental Appropriations Act, 1984
98-460	10-09-84	Social Security Disability Benefits Reform Act of 1984
98-617	11-08-84	[Social Security Act Titles IV, XVIII and XIX Amendments]
98-620	11-08-84	[Title IV—Federal Courts Improvements]
99-53	06-17-85	[Federal Employee Health Benefits Program Eligibility]
99-177	12-12-85	[Public Debt Limit Increase]
99-190	12-19-85	[Continuing Appropriations for Fiscal Year 1986]
99-198	12-23-85	Food Security Act of 1985
99-221	12-26-85	Cherokee Leasing Act
99-272	04-07-86	Consolidated Omnibus Budget Reconciliation Act of 1985
99-335	06-06-86	Federal Employees' Retirement System Act of 1986
99-349	07-02-86	Urgent Supplemental Appropriations Act, 1986
99-500	10-18-86	[Appropriations—Fiscal Year 1987]
99-509	10-21-86	Omnibus Budget Reconciliation Act of 1986
99-514	10-22-86	Tax Reform Act of 1986
99-570	10-27-86	Anti-Drug Abuse Act of 1986
99-576	10-28-86	Veterans' Benefits Improvement and Health-Care Authorization Act of 1986
99-591	10-30-86	[Continuing Appropriations—Fiscal Year 1987]
99-603	11-06-86	Immigration Reform and Control Act of 1986
99-643	11-10-86	Employment Opportunities for Disabled Americans Act
100-93	08-18-87	Medicare and Medicaid Patient and Program Protection Act of 1987
100-203	12-22-87	Omnibus Budget Reconciliation Act of 1987
100-300	04-29-88	International Child Abduction Remedies Act
100-360	07-01-88	Medicare Catastrophic Coverage Act of 1988
100-364	07-11-88	WIN Demonstration Program Extension Act of 1988
100-485	10-13-88	Family Support Act of 1988
100-628	11-07-88	Stewart B. McKinney Homeless Assistance Amendments Act of 1988
100-647	11-10-88	Technical and Miscellaneous Revenue Act of 1988
100-690	11-18-88	Anti-Drug Abuse Act of 1988
100-707	11-23-88	[Amendments to the Disaster Relief Act of 1974]
101-45	06-30-89	Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors of 1989
101-140	11-08-89	[Public Debt Limit Increase]
101-234	12-13-89	Medicare Catastrophic Coverage Repeal Act of 1989
101-239	12-19-89	Omnibus Budget Reconciliation Act of 1989
101-382	08-20-90	Customs and Trade Act of 1990
101-403	10-01-90	[Continuing Appropriations-Fiscal Year 1991]
101-508	11-05-90	Omnibus Budget Reconciliation Act of 1990

Public Law	*Approved*	*Short Title of Public Law*
101-597	11-16-90	National Health Service Corps Revitalization Amendments of 1990
101-624	11-28-90	Food, Agriculture, Conservation, and Trade Act of 1990
101-649	11-29-90	Immigration Act of 1990

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[1] Information within [ ] is supplied.
[2] Passed over veto.
[3] Private law.

APPENDIX J

CROSS-REFERENCE TABLE

SOCIAL SECURITY ACT—U.S. CODE

THIS TABLE SHOWS ALL SOCIAL SECURITY ACT SECTION NUMBERS AND THE CORRESPONDING SECTION NUMBERS IN TITLE 42 OF THE UNITED STATES CODE, *EXCEPT* WHERE THE CORRESPONDING 42 U.S. CODE SECTION NUMBER CAN BE ASCERTAINED BY ADDING "200" TO THE SOCIAL SECURITY ACT SECTION.

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1	301
2	302
3	303
4	304
6	306
224	424a
226A	426-1
705	906
706	907
707	908
708	909
709	910
710	911
711	912
1121	1320a
1122	1320a-1
1124	1320a-3
1124A	1320a-3
1125	1320a-4
1126	1320a-5
1127	1320a-6
1128	1320a-7
1128A	1320a-7a
1128B	1320a-7b
1131	1320b-1
1132	1320b-2
1133	1320b-3
1134	1320b-4
1135	1320b-5
1136	1320b-6
1137	1320b-7
1138	1320b-8
1139	1320b-9
1140	1320b-10
1141	1320b-11
1142	1320b-12
1143	1320b-13
1151	1320c
1152	1320c-1
1153	1320c-2
1154	1320c-3
1155	1320c-4
1156	1320c-5
1157	1320c-6
1158	1320c-7
1159	1320c-8
1160	1320c-9
1161	1320c-10
1162	1320c-11
1163	1320c-12
1164	1320c-13
1201	1321
1202	1322
1203	1323
1204	1324
1401	1351
1402	1352
1403	1353
1404	1354
1405	1355
1601	1381 note*
1602	1382 note*
1603	1383 note*
1604	1384 note*
1605	1385 note*
1601	1381
1602	1381a
1611	1382
1612	1382a
1613	1382b
1614	1382c
1615	1382d
1616	1382e
1617	1382f
1618	1382g
1619	1382h
1620	1382i
1621	1382j
1631	1383
1632	1383a
1633	1383b
1634	1383c
1635	1383d
1701	1391
1702	1392
1703	1393
1704	1394

PROVISIONS AFFECTING SOCIAL SECURITY PROGRAMS

SOCIAL SECURITY ACT SEC.	TITLE 42 U.S.CODE SECTION
1801	1395
1802	1395a
1803	1395b
1804	1395b-2
1811	1395c
1812	1395d
1813	1395e
1814	1395f
1815	1395g
1816	1395h
1817	1395i
1818	1395i-2
1818A	1395i-2a
1819	1395i-3
1820	1395i-4
1831	1395j
1832	1395k
1833	1395l
1834	1395m
1835	1395n
1836	1395o
1837	1395p
1838	1395q
1839	1395r
1840	1395s
1841	1395t
1842	1395u
1843	1395v
1844	1395w
1845	1395w-1
1846	1395w-2
1848	1395w-4
1861	1395x
1862	1395y
1863	1395z
1864	1395aa
1865	1395bb
1866	1395cc
1867	1395dd
1868	1395ee
1869	1395ff
1870	1395gg
1871	1395hh
1872	1395ii
1873	1395jj
1874	1395kk
1875	1395ll
1876	1395mm
1877	1395nn
1878	1395oo
1879	1395pp
1880	1395qq
1881	1395rr
1882	1395ss
1883	1395tt
1884	1395uu
1885	1395vv
1886	1395ww
1887	1395xx
1888	1395yy
1889	1395zz
1891	1395bbb
1892	1395ccc
1901	1396
1902	1396a
1903	1396b
1904	1396c
1905	1396d
1906	1396e
1907	1396f
1910	1396i
1911	1396j
1912	1396k
1913	1396l
1914	1396m
1915	1396n
1916	1396o
1917	1396p
1918	1396q
1919	1396r
1920	1396r-1
1921	1396r-2
1922	1396r-3
1923	1396r-4
1924	1396r-5
1925	1396r-6
1926	1396r-7
1927	1396r-8
1928	1396s
1929	1396t
1930	1396u
2001	1397
2002	1397a
2003	1397b
2004	1397c
2005	1397d
2006	1397e

*P.L. 92-603, §301, amended title XVI to exclude these sections and to substitute the supplemental security income program, and §303 repealed these State-administered title XVI sections, effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a social services program under these provisions if it chooses.

APPENDIX K

NORTHERN MARIANA ISLANDS[1]

P.L. 94-241, Approved March 24, 1976 (90 Stat. 263)[2]

[48 U.S.C. 1681 note]

JOINT RESOLUTION

To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America"[3], and for other purposes.

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947[4]; and

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

"Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

"Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

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[1] Background: The Northern Mariana Islands consist of 21 small islands, six of which are inhabited and 14 of which are large enough to be identified by name. Together with Guam, a U.S. territory, they form a western Pacific entity known as the Mariana Islands. The Marianas archipelago is one of three making up the Trust Territory of the Pacific Islands, a United Nations trusteeship under United States administration; the other two are the Carolines and the Marshall Islands. Saipan, Tinian and Rota, in that order, are the three largest islands of the Northern Marianas and most of the archipelago's 14,500 population lives on one or the other.

[2] See P.L. 95-134, §§403 and 501, in this Appendix, p. . See P.L. 95-348, §3(b) and (c) in this Appendix, p. .

[3] Presidential Proclamation 5564 dated November 3, 1986 published in the Federal Register on November 7, 1986 (51 FR 40399) placed this Covenant into full force and effect. (in this Appendix)

[4] 61 Stat. 3301.

"Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination."

* * * * * * *

"ARTICLE IV

"JUDICIAL AUTHORITY

* * * * * * *

"SECTION 403. * * *

(b) Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

"ARTICLE V

"APPLICABILITY OF LAWS

"SECTION 501. (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States.

"(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

"SECTION 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

* * * * * * *

"SECTION 606. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a separate fund to be known as the 'Northern Mariana Islands Social Security Retirement Fund'. This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable.

"(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will on January 1 of the first calendar year following the termination of the Trusteeship Agreement or upon such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

"(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

"(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

"(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate Federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

"(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

* * * * * * *

"ARTICLE X

"APPROVAL, EFFECTIVE DATES, AND DEFINITIONS[a]

"SECTION 1001. (a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

"(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

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[a] See Presidential Proclamation 4534, dated October 24, 1977, published in the Federal Register on October 27, 1977 (43 FR 56593), in this Appendix.

"SECTION 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States.[*]

"SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

"(a) Sections 105, 201-203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

"(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

"(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

"SECTION 1004. (a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

"(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffective until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

"SECTION 1005. As used in this Covenant:

"(a) 'Trusteeship Agreement' means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;

"(b) 'Northern Mariana Islands' means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14° north latitude, south of 21° north latitude, west of 150° east longitude and east of 144° east longitude;

"(c) 'Government of the Northern Mariana Islands' includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

"(d) 'Territory or possession' with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

"(e) 'Domicile' means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

"Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975."

* * * * * * *

SEC. 2. It is the sense of the Congress that pursuant to section 902 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.

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[*] See Presidential Proclamation 5564 dated November 3, 1986, published in the Federal Register on November 7, 1986 (51 FR 40399), in this Appendix.

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[*Internal References.*—S.S. Act titles I, IV, X, XIV, XVI (State), XVI and §228 catchlines have footnotes referring to P.L. 94-241.]

P.L. 95-134, Approved October 15, 1977 (91 Stat. 1159)

[Authorization for Appropriations—Insular Areas][1]

* * * * * * *

SEC. 403. [48 U.S.C. 1681 note] Effective on the date when section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by joint resolution approved on March 24, 1976 (90 Stat. 263) goes into force those laws which are referred to in section 502(a)(1) of said Covenant, except for any laws administered by the Social Security Administration, except for medicaid which is now administered by the Health Care Financing Administration, and except the Micronesian Claims Act of 1971 (85 Stat. 96) shall be applicable to the territories of Guam and the Virgin Islands on the same terms and conditions as such laws are applied to the Northern Mariana Islands.[2]

TITLE V

SEC. 501. [48 U.S.C. 1469a] In order to minimize the burden caused by existing application and reporting procedures for certain grant-in-aid programs available to the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands (hereafter referred to as "Insular Areas") it is hereby declared to be the policy of the Congress, notwithstanding any provision of law to the contrary, that:

(a) Any department or agency of the Government of the United States which administers any Act of Congress which specifically provides for making grants to any Insular Area under which payments received may be used by such Insular Area only for certain specified purposes (other than direct payments to classes of individuals) may, acting through appropriate administrative authorities of such department or agency, consolidate any or all grants made to such area for any fiscal year or years.

(b) Any consolidated grant for any insular area shall not be less than the sum of all grants which such area would otherwise be entitled to receive for such year.

(c) The funds received under a consolidated grant shall be expended in furtherance of the programs and purposes authorized for any of the grants which are being consolidated, which are authorized under any of the Acts administered by the department or agency making the grant, and which would be applicable to grants for such programs and purposes in the absence of the consolidation, but the Insular Areas shall determine the proportion of the funds granted which shall be allocated to such programs and purposes.

(d) Each department or agency making grants-in-aid shall, by regulations published in the Federal Register, provide the method by which any Insular Area may submit (i) a single application for a consolidated grant for any fiscal year period, but not more than one such application for a consolidated grant shall be required by any department or agency unless notice of such requirement is transmitted to the appropriate committees of the United States Congress together with a complete explanation of the necessity for requiring such additional applications and (ii) a single report to such department or agency with respect to each such consolidated grant: *Provided*, That nothing in this paragraph shall preclude such department or agency from providing adequate procedures for accounting, auditing, evaluating, and reviewing any programs or activities receiving benefits from any consolidated grant. The administering authority of any department or agency, in its discretion, shall (i) waive any requirement for matching funds otherwise required by law to be provided by the Insular Area involved and (ii) waive the requirement that any Insular Area submit an application or report in writing with respect to any consolidated grant. Notwithstanding any other provision of law, in the case of American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under $200,000 (including in-kind contributions) required by law to be provided by American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands.

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[1] See P.L. 95-348, §8, in this Appendix.

[2] Covenant §502 became effective 11 A.M. of January 9, 1978, Northern Mariana Islands local time. See Presidential Proclamation 4534, signed October 24, 1977, in this Appendix.

[*Internal References.*—P.L. 94-241, catchline has a footnote referring to P.L. 95-134.]

P.L. 95-348, Approved August 18, 1978 (92 Stat. 487)
[Northern Mariana Islands]

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SEC. 3.

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(b) [None assigned.] (1) The government of the Northern Marianas in carrying out the purposes of this Act, Public Law 95-134[1], or Public Law 94-241[2], may utilize, to the extent practicable, the available services and facilities of agencies and instrumentalities of the Federal Government on a reimbursable basis. Such amounts may be credited to the appropriation or fund which provided the services and facilities. Agencies and instrumentalities of the Federal Government may, when practicable, make available to the government of the Northern Marianas, upon request of the Secretary, such services and facilities as they are equipped to render or furnish, and they may do so without reimbursement if otherwise authorized by law.

(2) Any funds made available to the Northern Mariana Islands under grant-in-aid programs by section 502 of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (Public Law 94-241[3]), or pursuant to any other Act of Congress enacted after March 24, 1976, are hereby authorized to remain available until expended.

(3) Any amount authorized by the Covenant described in paragraph (2) or by any other Act of Congress enacted after March 24, 1976, which authorizes appropriations for the Northern Mariana Islands, but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

(c) [48 U.S.C. 1681 note] Notwithstanding the provisions of the Food Stamp Act of 1977[4], the Secretary of Agriculture is authorized, upon the request of the Governor of the Northern Mariana Islands, acting pursuant to legislation enacted in accordance with sections 5 and 7 of article II of the Constitution of the Northern Mariana Islands, and for the period during which such legislation is effective, (1) to implement a food stamp program in part or all of the Northern Mariana Islands with such income and household standards of eligibility, deductions, and allotment values as the Secretary determines, after consultation with the Governor, to be suited to the economic and social circumstances of such islands: *Provided*, That in no event shall such income standards of eligibility exceed those in the forty-eight contiguous States, and (2) to distribute or permit a distribution of federally donated foods in any part of the Northern Mariana Islands for which the Governor has not requested that the food stamp program be implemented. This authority shall remain in effect through September 30, 1981, and shall not apply to section 403 of Public Law 95-135.

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AUTHORIZATIONS TO REMAIN AVAILABLE

SEC. 8. [None assigned.] Any amount authorized by this Act or by the Act entitled "An Act to authorize certain appropriations for the territories of the United States, to amend certain Acts relating thereto, and for other purposes" (Public Law 95-134; 91 Stat. 1159[5]) but not appropriated for a fiscal year is authorized to be available for appropriation in succeeding fiscal years.

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[*Internal References.*—P.L. 94-241 and P.L. 95-134 have footnotes referring to P.L. 95-348.]

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[1] See P.L. 95-134, in this Appendix.
[2] See P.L. 94-241, in this Appendix.
[3] See footnote 2.
[4] See Food Stamp Act of 1977 (P.L. 88-525), (this volume).
[5] See P.L. 95-134, this Appendix.

P.L. 98-213, Approved December 8, 1983 (97 Stat. 1459)
[Insular Affairs]

* * * * * * *

SEC. 17. [48 U.S.C. 1681 note] No provision of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall bar the United States of America from paying compensation to or employing any citizen of the Northern Mariana Islands.

SEC. 18. [48 U.S.C. 1681 note] No requirement of United States citizenship in any Federal law which provides Federal services or financial assistance and which is applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant or, if enacted subsequent to March 24, 1976, by its own terms shall bar a citizen of the Northern Mariana Islands from receiving services or assistance pursuant to such law.

SEC. 19. [48 U.S.C. 1681 note] (a) The President may, subject to the provisions of section 20 of this Act, by proclamation provide that the requirement of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands. The President is authorized to correct clerical errors in the list, and to add to it provisions, where it appears from the context that they were inadvertently omitted from the list.

(b) A statute which denies a benefit or imposes a burden or a disability on an alien, his dependents or his survivors shall, for the purposes of this Act, be considered to impose a requirement of United States citizenship or nationality.

SEC. 20. [48 U.S.C. 1681 note] (a) The President may issue one or more proclamations under the authority of this Act.

(b) When issuing such proclamation or proclamations the President—

(1) shall take into account:

(i) the hardship suffered by the citizens of the Northern Mariana Islands resulting from the fact that, while they are subject to most of the laws of the United States, they are denied the benefit of those laws which contain a requirement of United States citizenship or nationality;

(ii) the responsibilities, obligations, and limitations imposed upon the United States by international law;

(2) may make the requirement of United States citizenship or nationality inapplicable only to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States;

(3) may make the requirement of a United States citizenship or nationality inapplicable only in the Northern Mariana Islands;

(4) may retain the requirement of United States citizenship or nationality with respect to parts of a statute or portion thereof.

SEC. 21. [48 U.S.C. 1681 note] If the President does not issue any proclamation authorized by section 19 of this Act within a period of six months following the effective date of the Act, the requirement of United States citizenship or nationality as a prerequisite of any benefit, right, privilege, or immunity in any statute made applicable to the Northern Mariana Islands by the terms of that statute or by operation of the Covenant shall not be applicable to citizens of the Northern Mariana Islands: *Provided*, That the provisions of this section shall not be applicable to any requirements of United States citizenship or nationality contained in statutes relating to the political rights of citizenship, and to the diplomatic protection of, and services to, citizens or nationals of the United States in foreign countries: *Provided further*, That with respect to the statutes relating to the uniformed services, the requirement of United States citizenship or nationality shall remain in effect, except with respect to those citizens of the Northern Mariana Islands who declare in writing that they do not intend to exercise their option under section 302 of the Covenant to become a national but not a citizen of the United States.

SEC. 22. [48 U.S.C. 1681 note] Nothing in this Act shall be construed as extending to the Northern Mariana Islands any statutory provision or regulation not otherwise applicable to or within the Northern Mariana Islands, in particular the statutes relating to immigration and nationality and the regulations issued under them.

SEC. 23. [48 U.S.C. 1681 note] The authority of the President to issue proclamations under section 19 of this Act shall terminate upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant. Section 21 of this Act shall not become effective if the Commonwealth of the Northern Mariana Islands is established within the period of six months following the effective date of this Act.

SEC. 24. [48 U.S.C. 1681 note] As used in this Act:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or

(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

* * * * * * *

Proclamation 4534 October 24, 1977

Constitution of the Northern Mariana Islands

By the President of the United States of America

A Proclamation[1]

On February 15, 1975, the Marianas Political Status Commission, the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States signed a Covenant, the purpose of which is to provide for the eventual establishment of a Commonwealth of the Northern Mariana Islands in political union with the United States of America. This Covenant was subsequently approved by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands voting in a plebiscite. The Covenant was approved by the Congress of the United States by joint resolution approved March 24, 1976 (Public Law 94-241; 90 Stat. 263).

In accordance with the provisions of Article II of the Covenant, the people of the Northern Mariana Islands have formulated and approved a Constitution which was submitted to me on behalf of the Government of the United States on April 21, 1977, for approval on the basis of its consistency with the Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. Pursuant to the provisions of Section 202 of the Covenant, the Constitution of the Northern Mariana Islands will be deemed to have been approved by the Government of the United States six months after the date of submission to the President unless sooner approved or disapproved.

The six-month period of Section 202 of the Covenant having expired on October 22, 1977, I am pleased to announce that the Constitution of the Northern Mariana Islands is hereby deemed approved.

I am satisfied that the Constitution of the Northern Mariana Islands complies with the requirements of Article II of the Covenant. I have also received advice from the Senate Committee on Energy and Natural Resources and the Subcommittee on National Parks and Insular Affairs of the House Committee on Interior and Insular Affairs that the Constitution complies with those requirements.

Sections 1003(b) and 1004(b) of the Covenant provide that the Constitution of the Northern Mariana Islands and the provisions specified in Section 1003(b) of the Covenant shall become effective on a date proclaimed by the President which will be not more than 180 days after the Covenant and the Constitution of the Northern Mariana Islands have both been approved.

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[1] Published at 42 FR 56593, October 27, 1977 and 48 U.S.C. 1681 note.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim as follows:

SECTION 1. The Constitution of the Northern Mariana Islands shall come into full force and effect at eleven o'clock on the morning of January 9, 1978, Northern Mariana Islands local time.

SEC. 2. Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601-605, 607, Article VII, Sections 802-805, 901 and 902 of the Covenant shall come into full force and effect on the date and at the time specified in Section 1 of this Proclamation.

SEC. 3. The authority of the President under Section 1004 of the Covenant to suspend the application of any provision of law to or in the Northern Mariana Islands until the termination of the Trusteeship Agreement is hereby reserved.

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[Internal References.—P.L. 94-241, §1 (§1001 catchline) and P.L. 95-134, §403, have footnotes referring to Proclamation 4534.]

Proclamation 5207 of June 7, 1984

Application of Certain Laws of the United States to Citizens of the Northern Mariana Islands

By the President of the United States of America

A Proclamation

The Northern Mariana Islands, as part of the Trust Territory of the Pacific Islands, are administered by the United States under a Trusteeship Agreement between the United States and the Security Council of the United Nations (61 Stat. 3301). The United States has undertaken to promote the political development of the Trust Territory toward self-government or independence and to protect the rights and fundamental freedoms of its peoples.

The United States and the Northern Mariana Islands have entered into a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241; 90 Stat. 263; 48 U.S.C. 1681, note[1]) pursuant to which many provisions of the laws of the United States became applicable to the Northern Mariana Islands as of January 9, 1978 (Proclamation No. 4534, Section 2).

Sections 19 and 20 of Public Law 98-213 (97 Stat. 1464)[2] authorize the President, subject to certain limitations, to provide by proclamation that requirements "of United States citizenship or nationality provided for in any of the statutes listed on pages 63-74 of the Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States, dated January 1982 and submitted pursuant to section 504 of the Covenant, shall not be applicable to the citizens of the Northern Mariana Islands."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by sections 19 and 20 of Public Law 98-213, do hereby proclaim as follows:

* * * * * * *

3. *Statutes relating to protection and services in foreign countries.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

* * * * * * *

(f) Section 1113 of the Act of August 14, 1935, c.531, as added by section 302 of Public Law 87-64, 75 Stat. 142, and as amended (42 U.S.C. 1313).

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6. *Statutes relating to Federal programs and benefits.*

No requirement of United States citizenship or nationality in any of the Federal laws listed below shall be applicable to citizens of the Northern Mariana Islands.

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[1] See this Appendix.

[2] See this Appendix.

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(i) Subsection (b)(3) of section 2 and section 4 of the Act of August 14, 1935, c.531, 49 Stat. 620, 622, as amended (42 U.S.C. 302(b)(3) and 304);

(j) Subsection (t) of section 202 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 118 of the Act of August 1, 1956, c.836, 70 Stat. 835, and as amended (42 U.S.C. 402(t));

(k) Subsection (a)(4) of section 103 of Public Law 89-97, 79 Stat. 333, as amended (42 U.S.C. 426a(a)(4));

(l) Subsection (a)(3) of section 228 of the Act of August 14, 1935, c.531, as added by subsection (a) of section 302 of Public Law 89-368, 80 Stat. 67, as amended (42 U.S.C. 428(a)(3));

(m) Subsection (b)(2) of section 1002 and section 1004 of the Act of August 14, 1935, c.531, 49 Stat. 646, as amended (42 U.S.C. 1202(b)(2) and 1204);

(n) Subsection (b)(2) of section 1402 and section 1404 of the Act of August 14, 1935, c.531, as added by section 351 of the Act of August 28, 1950, c.809, 64 Stat. 555 (42 U.S.C. 1352(b)(2) and 1354);

* * * * * * *

7. As used in this Proclamation:

(a) "Covenant" means the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, approved by the Joint Resolution of March 24, 1976 (90 Stat. 263, 48 U.S.C. 1681, note).

(b) "Citizen of the Northern Mariana Islands" means a citizen of the Trust Territory of the Pacific Islands and his or her children under the age of eighteen years, who does not owe allegiance to any foreign state, and who—

(1) was born in the Northern Mariana Islands and is physically present in the Northern Mariana Islands or in the United States or any territory or possession thereof; or
(2) has been lawfully and continuously domiciled in the Northern Mariana Islands since January 1, 1974, and, who, unless then under age, was registered to vote in an election for the Mariana Islands legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975.

(c) "Domicile" means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

(d) "Statute which imposes a requirement of United States citizenship or nationality" includes any statute which denies a benefit or imposes a burden or a disability on an alien, his dependents, or his survivors.

8. Upon the establishment of the Commonwealth of the Northern Mariana Islands pursuant to section 1002 of the Covenant, the benefits acquired under this Proclamation shall merge without interruption into those to which the recipient is entitled by virtue of his acquisition of United States citizenship, unless the recipient exercises his privilege under section 302 of the Covenant to become a national but not a citizen of the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and eighth.

Ronald Reagan

Published at 49 FR 24365, June 13, 1984 and 48 U.S.C. 1681 note.

Title 3— Proclamation 5564 of November 3, 1986

The President

Placing Into Full Force and Effect the Covenant With the Commonwealth of the Northern Mariana Islands, and the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands

By the President of the United States of America

A Proclamation[1]

Since July 18, 1947, the United States has administered the United Nations Trust Territory of the Pacific Islands ("Trust Territory"), which includes the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.

On February 15, 1975, after extensive status negotiations, the United States and the Marianas Political Status Commission concluded a Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States ("Covenant"). Sections 101, 1002, and 1003(c) of the Covenant provide that the Northern Mariana Islands will become a self-governing Commonwealth in political union with and under the sovereignty of the United States. This Covenant was approved by the Congress by Public Law 94-241 of March 24, 1976, 90 Stat. 263.[2] Although many sections of the Covenant became effective in 1976 and 1978, certain sections have not previously entered into force.

On October 1, 1982, the Government of the United States and the Government of the Federated States of Micronesia concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. On June 25, 1983, the Government of the United States and the Government of the Marshall Islands concluded a Compact of Free Association, establishing a relationship of Free Association between the two Governments. Pursuant to Sections 111 and 121 of the Compacts, the Federated States of Micronesia and the Republic of the Marshall Islands become self-governing and have the right to conduct foreign affairs in their own name and right upon the effective date of their respective Compacts. Each Compact comes into effect upon (1) mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the other Government; (2) the approval of the Compact by the two Governments, in accordance with their constitutional processes; and (3) the conduct of a plebiscite in that jurisdiction. In the Federated States of Micronesia, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on June 21, 1983, a sovereign act of self-determination. In the Marshall Islands, the Compact has been approved by the Government in accordance with its constitutional processes, and in a United Nations-observed plebiscite on September 7, 1983, a sovereign act of self-determination. In the United States the Compacts have been approved by Public Law 99-239 of January 14, 1986, 99 Stat. 1770.

On January 10, 1986, the Government of the United States and the Government of the Republic of Palau concluded a Compact of Free Association, establishing a similar relationship of Free Association between the two Governments. On October 16, 1986, the Congress of the United States approved the Compact of Free Association with the Republic of Palau. In the Republic of Palau, the Compact approval process has not yet been completed. Until the future political status of Palau is resolved, the United States will continue to discharge its responsibilities in Palau as Administering Authority under the Trusteeship Agreement.

On May 28, 1986, the Trusteeship Council of the United Nations concluded that the Government of the United States had satisfactorily discharged its obligations as the Administering Authority under the terms of the Trusteeship Agreement and that the people of the Northern Mariana Islands, the Federated States of Micronesia, and the Republic of the Marshall Islands had freely exercised their right to self-determination, and considered that it was appropriate for that Agreement to be terminated. The Council asked the United States to consult with the governments concerned to agree on a date for entry into force of their respective new status agreements.

On October 15, 1986, the Government of the United States and the Government of the Republic of the Marshall Islands agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Republic of the Marshall Islands, the effective date of the Compact shall be October 21, 1986.

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[1] 51 FR 40399, November 7, 1986 and 48 U.S.C. 1681 note.
[2] See P.L. 94-241, this Appendix.

On October 24, 1986, the Government of the United States and the Government of the Federated States of Micronesia agreed, pursuant to Section 411 of the Compact of Free Association, that as between the United States and the Federated States of Micronesia, the effective date of the Compact shall be November 3, 1986.

On October 24, 1986, the United States advised the Secretary General of the United Nations that, as a consequence of consultations held between the United States Government and the Government of the Marshall Islands, agreement had been reached that the Compact of Free Association with the Marshall Islands entered fully into force on October 21, 1986. The United States further advised the Secretary General that, as a result of consultations with their governments, agreement had been reached that the Compact of Free Association with the Federated States of Micronesia and the Covenant with the Commonwealth of the Northern Mariana Islands would enter into force on November 3, 1986.

As of this day, November 3, 1986, the United States has fulfilled its obligations under the Trusteeship Agreement with respect to the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, and the Federated States of Micronesia, and they are self-governing and no longer subject to the Trusteeship. In taking these actions, the United States is implementing the freely expressed wishes of the peoples of the Northern Mariana Islands, the Federated States of Micronesia, and the Marshall Islands.

NOW, THEREFORE, I, RONALD REAGAN, by the Authority vested in me as President by the Constitution and laws of the United States of America, including Section 1002 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, and Sections 101 and 102 of the Joint Resolution to approve the "Compact of Free Association", and for other purposes, approved on January 14, 1986 (Public Law 99-239), do hereby find, declare, and proclaim as follows:

Section 1. I determine that the Trusteeship Agreement for the Pacific Islands is no longer in effect as of October 21, 1986, with respect to the Republic of the Marshall Islands, as of November 3, 1986, with respect to the Federated States of Micronesia, and as of November 3, 1986, with respect to the Northern Mariana Islands. This constitutes the determination referred to in Section 1002 of the Covenant.

Sec. 2. (a) Sections 101, 104, 301, 302, 303, 506, 806, and 904 of the Covenant are effective as of 12:01 a.m., November 4, 1986, Northern Mariana Islands local time.

(b) The Commonwealth of the Northern Mariana Islands in political union with and under the sovereignty of the United States of America is fully established on the date and at the time specified in Section 2(a) of this Proclamation.

(c) The domiciliaries of the Northern Mariana Islands are citizens of the United States to the extent provided for in Sections 301 through 303 of the Covenant on the date and at the time specified in this Proclamation.

(d) I welcome the Commonwealth of the Northern Mariana Islands into the American family and congratulate our new fellow citizens.

Sec. 3. (a) The Compact of Free Association with the Republic of the Marshall Islands is in full force and effect as of October 21, 1986, and the Compact of Free Association with the Federated States of Micronesia is in full force and effect as of November 3, 1986.

(b) I am gratified that the people of the Federated States of Micronesia and the Republic of the Marshall Islands, after nearly forty years of Trusteeship, have freely chosen to establish a relationship of Free Association with the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of November, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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